CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 156

THE DETROIT BANK, FORMERLY THE DETROIT SAVINGS BANK, A MICHIGAN BANKING CORPORATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 214

STATE OF MICHIGAN, JOHN J. O'HARA, AUDITOR GENERAL FOR THE STATE OF MICHIGAN, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { JUNE 17, 1942. JULY 7, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

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CALENDAR ENTRIES—DISTRICT COURT

1936—

May 4—Bill of Complaint filed.

May 4—Chancery Subpoena issued, 31 copies made for service.

May 4—Affidavit of non-residence filed.

May 4—Petition for Order of Publication filed.

May 4—Order for Publication filed and entered.

May 12—Appearance of Estate of Chas. H. Wiltsie, Mary Emily Wiltsie Field, Executrix, filed.

May 13—Appearance of Union Investment Co. by Butzel, Levin & Winston, Attorneys, filed.

May 13—Answer of Union Investment Company filed.

May 15—Appearance of The Detroit Bank and Ernest H. King Receiver by Miller, Canfield, Paddock & Stone, Attorneys, filed.

May 18—Entry and Notice of Appearance of Detroit Trust Company by Miller, Canfield, Paddock & Stone, Attorneys, filed.

May 20—Answer of The Detroit Bank filed.

May 20—Answer of Detroit Trust Company filed.

May 20—Answer of B. C. Schram, Receiver, filed.

May 28—Chancery Subpoena returned served with Copy of Bill of Complaint, on E. B. Finley, Jr., M. E. Bowlus, E. A. Edwards, B. C. Schram, Union Guardian Trust Co. by E. C. Harris, Treas., Union Investment Co. by E. Malwitz; The Detroit Bank, by Cecil S. Hunt, Asst. Cashier; The Detroit Trust Company by N. J. Miller, Ass't. Treas., State of Michigan, by John T. Meier, Ass't. Atty. General; John J. O'Hara, Auditor General, by John T. Meier, Ass't. Atty. General; County of Wayne by Chas. A. Smith, Chief Deputy County Clerk; Jacob P. Sumeracki, City of Detroit by Walter Barlow, Chief Asst. Corp. Counsel; Albert E. Cobo, City of Highland Park, by Thomas Shawcross, City Clerk, Robert Smith, Treasurer of Highland Park; May 19, 1936;

not served on John W. Paul, Riney T. Paul, Jessie B. Paul, Amelia L. Paul, Florence H. Paul, T. Paul Hickey, Howard J. Ely, Ernest H. King; Frederick P. Paul, Ruby H. Paul or Nettie B. Paul; filed.

May 28—Appearance of City of Detroit, and Albert E. Cobo by Raymond J. Kelly, Corporation Counsel.

May 28—Answer of City of Detroit and Albert E. Cobo—Treasurer, filed.

May 29—Proof of Service filed.

June 2—Answer of State of Michigan and John J. O'Hara, Auditor General by David H. Crowley, Attorney General, filed.

June 2—Answer of City of Highland Park and Robert City, Treasurer by Earl B. Young, Attorney, filed.

June 8—Answer of Union Guardian Trust Company filed.

June 10—Answer of Liquidating Trustees filed.

June 12—Answer of Ernest H. King, Receiver, filed.

June 15—Affidavit of Publication filed.

Aug. 4—Appearance of Defendant Manuel Faust by Joseph S. McDowell, Attorney, filed.

Aug. 5—Praecipe for alias Subpoena filed.

Aug. 5—Alias chancery subpoena for John W. Paul, Frederick P. Paul, Ruby H. Paul, Nettie B. Paul, Riney T. Paul, Jessie B. Paul, Amelia L. Paul, Florence H. Paul, Individually and as Admx. of Estate of Charles P. Paul, T. Paul Hickey, Howard J. Ely, Guardian of Julia Blanche Hickey—copies made for service.

Aug. 28—Alias chancery subpoena returned unserved.

Nov. 11—Praecipe for Pluries subpoena filed.

Nov. 11—Pluries chancery subpoenas for John W. Paul, Frederick P. Paul, Ruby H. Paul, Nettie B. Paul, Riney T. Paul, Jessie B. Paul, Amelia L. Paul, Florence H. Paul, T. Paul Hickey, Howard J. Ely. Copies made for service.

Dec. 14—Pluries chancery subpoena for John W. Paul, et al. returned served on T. Paul Hickey and Howard J. Ely, December 4, 1936; Not served on John W. Paul, Nettie Paul, Amelia L. Paul, Riney T. Paul, Frederick P. Paul, Ruby H. Paul, Florence Paul or Jessie B. Paul, filed.

Dec. 14—Marshal's return on Proof of Service of Copy of Bill of Complaint on T. Paul Hickey and Howard J. Ely, December 4, 1936; Not served on John W. Paul, Nettie Paul, Amelia Paul, Riney T. Paul, Frederick Paul, Ruby H. Paul, Florence Paul or Jessie B. Paul, filed.

Dec. 24—Appearance of T. Paul Hickey and Howard J. Ely by John W. Hindes, Attorney, filed.

1937—

Jan. 27—Answer of T. Paul Hickey and Howard J. Ely, filed.

Jan. 29—Appearance of John W. Paul, Frederick P. Paul, Riney F. Paul, Nettie B. Paul and Amelia L. Paul by Charles A. Lorenzo, Attorney, filed.

Feb. 27—Answer of Mary Emelie Wiltsie Field, Executrix, filed.

April 30—Appearance of Ruby H. Paul by Charles A. Lorenzo, Attorney, filed.

May 4—Appearance of Florence H. Paul by Henry Wunsch and Edward F. Wunsch, Attorneys, filed.

Aug. 31—Answer of John W. Paul, Frederick B. Paul, Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul, and Amelia L. Paul, filed.

1938—

June 27—Appearance of County of Wayne and Jacob P. Sumeracki by Duncan C. McCrea, Prosecuting Attorney, Garfield A. Nichols, Assistant Prosecuting Attorney, filed.

July 6—Answer of County of Wayne and Jacob P. Sumeracki, Treasurer, filed.

July 19—Stipulation of Facts filed.

Sept. 19—Petition to set Trial Date filed.

Sept. 19—Notice of Hearing on Motion to set Trial Date September 19, 1938, filed.

Sept. 19—Order setting case for November 14, 1938 entered.

Nov. 8—Intervening Answer of Chas. I. Russo, Trustee in Bky., filed.

Nov. 14—Cause heard and submitted on pleadings and proofs.

1939—

Apr. 11—Order fixing time and place for production of Additional Proof filed and entered.

Apr. 17—Additional proofs heard in part continued to April 24, 1939.

Apr. 24—Final hearing on additional proofs had with leave to file briefs.

May 1—Request of The Detroit Bank for Findings of Fact and Conclusions of Law filed.

May 1—Request of Detroit Trust Co. for Findings of Fact and Conclusions of Law filed.

May 1—Request of Ernest H. King for Findings of Fact and Conclusions of Law filed.

May 3—Amendment to request for Findings of Fact and Conclusions of Law by the Detroit Trust Co. filed.

May 3—Amendment to request of The Detroit Bank for Findings of Fact and Conclusions of Law filed.

Nov. 3—Petition and Order to Show Cause for Injunction—Returnable Nov. 13, 1939 filed. Order entered.

Nov. 11—Hearing on Order to Show Cause continued to Nov. 20, 1939 by consent.

Nov. 20—Order adjourning hearing on Order to Show Cause to Nov. 20, 1939 filed, and entered.

Nov. 20—Order Dismissing Order to Show Cause filed and entered.

Dec. 4—Acknowledgment of handling of properties filed.

1940—

Aug. 12—Findings of Fact and Conclusions of Law filed.

Oct. 11—Motion of Detroit Trust Co. to Intervene, hearing Oct. 7, 1940 filed.

Oct. 11—Praecipe for Motion filed.

Oct. 18—Order for adjournment of Motion to Dec. 9, 1940 filed and entered.

Nov. 15—Stipulation for Dismissal as to Parcel Fifty filed.

Nov. 15—Order Dismissing Bill of Complaint as to Parcel (50) Fifty with Prejudice filed and entered.

Dec. 9—Stipulation for the Amendment of Findings of Fact filed.

Dec. 9—Order amending Findings of Fact filed and entered.

Dec. 9—Computation of Amount of Judgment filed.

Dec. 9—Decree for Plaintiff filed and entered.

1941—

Feb. 18—Petition for Restraining Order filed. Hearing Feb. 24, 1941.

Feb. 24—Restraining Order filed and entered.

Mar. 4—Notice of Appeal of The Detroit Bank filed.

Mar. 4—Bond on Appeal in $250.00 filed. The Travelers Indemnity Co. Surety 3/4/41.

Mar. 4—Notification of Filing Notice of Appeal filed.

Mar. 4—Designation of Contents of Record on Appeal filed.

Mar. 4—Stipulation Re Designation filed.

Mar. 4—Transcript of Testimony and Proceedings filed (3 Volumes) 1 copy Lodged.

Mar. 5—Proof of Mailing of Notice of Appeal filed.

Mar. 7—Notice of Appeal mailed to Duncan C. McCrea, et al. returned unclaimed filed.

Mar. 7—Notice of Appeal of the City of Detroit, et al. filed.

Mar. 7—Proof of Mailing of Notice of Appeal filed.

Mar. 7—Bond on Appeal of the City of Detroit in $250.00 filed. Royal Indemnity Co. Surety 3/7/41.

Mar. 6—Notice of Appeal of John W. Paul, et al. filed.

Mar. 6—Bond on Appeal of John W. Paul, et al. in $250.00 filed. Edward Shelton Surety 3/5/41.

Mar. 8—Notice of Appeal of State of Michigan filed.

Mar. 8—Notice of Appeal of County of Wayne filed.

Mar. 8—Bond on Appeal, County of Wayne in $250.00 filed. St. Paul Mercury Indemnity Company Surety 3/8/41.

Mar. 10—Proof of Mailing of Notice of Appeal of John W. Paul, et al. filed.

Mar. 10—Proof of Mailing of Notice of Appeal of County of Wayne filed.

Mar. 10—Proof of Mailing of Notice of Appeal of State of Michigan filed.

Mar. 10—Bond of State of Mich. in $250.00 filed. National Surety Co. Surety 3/10/41.

Mar. 11—Motion to Amend Final Decree filed. Hearing Mar. 14, 1941.

Mar. 14—Order Amending Final Decree filed and entered.

Apr. 9—Stipulation extending time filed.

Apr. 9—Order extending time for filing Record on Appeal and Docketing the Action to May 12, 1941 filed and entered.

May 6—Order extending time for filing Record on Appeal and Docketing the Action.

May 7—Stipulation extending time filed.

May 12—Designation of John W. Paul, et al. of Record and Proceedings on Appeal filed.

May 20—Designation of City of Detroit and Albert E. Cobo of Contents of Record on Appeal filed.

May 21—Designation of State of Michigan of Contents of Record on Appeal, filed.

May 23—Designation of County of Wayne of Contents of Record on Appeal, filed.

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UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
IN EQUITY

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN W. PAUL, FREDERICK P. PAUL and RUBY H. PAUL, his wife, NETTIE B. PAUL, RINEY T. PAUL and JESSIE B. PAUL, his wife, AMELIA L. PAUL, FLORENCE H. PAUL, individually and as Administratrix of the Estate of Charles P. Paul, deceased, T. PAUL HICKEY, HOWARD J. ELY, Guardian of Julia Blanche Hickey, E. B. FINLEY, JR., M. E. BOWLUS and E. A. EDWARDS, Liquidating Trustees under Declaration of Trust recorded in Wayne County in Liber 4166 of Deeds, page 305, ERNEST H. KING, Receiver in that certain cause listed as No. 241,203 in Chancery, in the Circuit Court for the County of Wayne, E. C. CHILDS, CHARLES H. WILTSIE, M. FAUST, B. C. SCHRAM, Receiver of First National Bank-Detroit, a National Banking Association, UNION GUARDIAN TRUST COMPANY, a Michigan corporation, UNION INVESTMENT COMPANY, a Michigan corporation, THE DETROIT BANK, formerly the Detroit Savings Bank, a Michigan Banking Corporation, THE DETROIT TRUST COMPANY, a Michigan corporation, STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a Public Body Corporate, JACOB P. SUMERACKI, Treasurer for Wayne County, CITY OF DETROIT, a Municipal Corporation, ALBERT E. COBO, Treasurer of the City of Detroit, CITY OF HIGHLAND PARK, a Municipal Corporation, and ROBERT SMITH, Treasurer of the City of Highland Park,

Defendants.

No. 7544

BILL OF COMPLAINT

(Filed May 4, 1936)

To the Honorable Judges of the District Court of the United States for the Eastern District of Michigan:

The United States of America, by Gregory H. Frederick, United States Attorney for the Eastern District of Michigan,

complaining of defendants herein, respectfully shows unto this Court:

I.

That at all times hereinafter mentioned plaintiff was, and now is, a corporation sovereign and body politic.

II.

That at all times hereinafter mentioned John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney T. Paul and Jessie B. Paul, his wife, Amelia L. Paul, Florence H. Paul, individually and as Administratrix of the Estate of Charles P. Paul, deceased, T. Paul Hickey, Howard J. Ely, Guardian of Julia Blanche Hickey, E. B. Finley, Jr., M. E. Bowlus and E. A. Edwards, Liquidating Trustees under Declaration of Trust recorded in Wayne County, in Liber 4166 of Deeds, page 305, Ernest H. King, Receiver in that certain cause listed as No. 241,203 in Chancery, in the Circuit Court for the County of Wayne, and B. C. Schram, Receiver of First National Bank-Detroit, a National Banking Association, were and now are citizens of the United States and of the State of Michigan, and are inhabitants of the Eastern Judicial District of Michigan, Southern Division thereof, and reside in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this court; that at all times hereinafter mentioned E. C. Childs was and now is a resident of Windsor, Ontario, Canada, and alleges an interest in certain property hereinafter described; that at all times hereinafter mentioned Charles H. Wiltsie was and now is a citizen of the United States and an inhabitant of the State of New York, and resides in the City of Rochester, New York, and alleges an interest in certain property hereinafter described; that at all times hereinafter mentioned M. Faust was and now is a citizen of the United States and an inhabitant of the State of Ohio, and resides in the City of Cleveland, Ohio, and alleges an interest in certain proper-

ty hereinafter described; that at all times hereinafter mentioned the Union Guardian Trust Company, a Michigan corporation, the Union Investment Company, a Michigan corporation, and the Detroit Trust Company, a Michigan corporation, are corporations duly organized and existing under and by virtue of the laws of the State of Michigan, having their principal place of business in the City of Detroit, State of Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned the Detroit Bank, formerly the Detroit Savings Bank, a Michigan Banking Corporation, was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, having its principal place of business in the City of Detroit, State of Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned the State of Michigan was and now is a sovereign state; that at all times hereinafter mentioned the County of Wayne was and now is a Public Body Corporate, within the State of Michigan and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned the City of Detroit was and now is a Municipal Corporation, within the State of Michigan and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned John J. O'Hara, Auditor General for the State of Michigan, was and now is a citizen of the United States and of the State of Michigan, and resides in the City of Lansing, Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned Albert E. Cobo, Treasurer of the City of Detroit, was and now is a citizen of the United States and of the State of Michigan, and resides in the City of Detroit, Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned Jacob P.

Sumeracki, Treasurer of Wayne County, was and now is a citizen of the United States and of the State of Michigan, and resides in the City of Detroit, Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned the City of Highland Park was and now is a Municipal Corporation within the State of Michigan and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned Robert Smith, Treasurer of the City of Highland Park, was and now is a citizen of the United States and of the State of Michigan, and resides in the City of Highland Park, Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof.

That plaintiff has caused an examination to be made in the office of the Register of Deeds for Wayne County, Michigan, and, based upon such examination and other information in plaintiff's possession, alleges that each of the above named defendants alleges an interest in the premises hereinafter described.

III.

That this is a suit in equity of civil nature arising under the laws of the United States providing for internal revenue and the collection thereof.

IV.

That this action is instituted by direction of the Commissioner of Internal Revenue and is authorized and sanctioned by the Attorney General of the United States.

V.

That John P. Paul, a resident of the City of Detroit, Wayne County, Michigan, died intestate on May 5, 1926, leaving heirs as follows: Lena Paul, his widow, and John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney T. Paul, Amelia L. Paul and Charles P. Paul, his children.

VI.

That Lena Paul, widow of said John P. Paul, died intestate on to-wit February 18, 1931; that Charles P. Paul died prior to the institution of this suit, leaving no children.

VII.

That at the time of his death on May 5, 1926, said John P. Paul was the owner of divers parcels of real estate and other property.

VIII.

That on or about July 5, 1927, Lena Paul, describing herself as "widow of John P. Paul and joint-owner with him of all his properties," executed and filed in the office of the Collector of Internal Revenue a Federal estate tax return for the estate of said John P. Paul, deceased, reporting a gross estate of $493,902.00, deductions of $329,823.49, a net estate of $164,078.51, and a tax liability of $3,450.00, which was duly paid.

IX.

That the Commissioner of Internal Revenue notified said Lena Paul by letter dated March 14, 1930, addressed to "Lena Paul beneficiary, Estate of John P. Paul," of a deficiency in estate tax in the sum of $23,271.84, and advised her of her right to file an appeal with the United States Board of Tax Appeals.

X.

That on or about May 10, 1930, an appeal entitled "Appeal of Estate of John P. Paul, Lena Paul, beneficiary, Docket No. 48933" was filed with the United States Board of Tax Appeals.

XI.

That on or about November 4, 1932, said United States Board of Tax Appeals entered an order in connection with the appeal of the Estate of John P. Paul, determining that

there was an estate tax deficiency due plaintiff in the sum of $23,271.84.

XII.

That no proceedings were had or appeal taken from said order of the Board of Tax Appeals entered on November 4, 1932, determining the Federal estate tax liability of said estate of John P. Paul, deceased; that the time for such an appeal has expired; and that said order of the Board of Tax Appeals has become final.

XIII.

That in accordance with the applicable provisions of revenue laws of the United States, interest on said deficiency of $23,271.84 due from the Estate of John P. Paul, deceased, accrued at the rate of six per cent (6%) per annum from May 5, 1927 to February 19, 1933; and that said interest on the deficiency to February 19, 1933 amounted to $8,080.28.

XIV.

That on or about February 19, 1933, the Commissioner of Internal Revenue duly assessed against the Estate of John P. Paul, deceased, said deficiency in the principal amount of $23,271.84 on account of said estate tax liability as finally determined by the United States Board of Tax Appeals, together with interest on said deficiency in the sum of $8,080.28.

XV.

That on to-wit February 25, 1933, plaintiff, through the United States Collector of Internal Revenue at Detroit, Michigan, duly served notice and demand for payment of said deficiency of $23,271.84 and interest of $8,080.28; that at sundry and diverse times thereafter said Collector served further notices and demands for payment of said tax and interest.

XVI.

That notwithstanding notice and demand for payment of said deficiency and interest was duly made by plaintiff's Collector of Internal Revenue, no part of said tax or interest has been paid; that there is now due and owing to plaintiff additional estate tax in the sum of $23,271.84, together with interest thereon to February 19, 1933 at six per cent (6%) per annum in the sum of $8,080.28, and interest on said aggregate sum of $31,352.12 at six per cent (6%) per annum from February 19, 1933 to February 25, 1933, at one per cent (1%) per month from February 25, 1933 to August 30, 1935, and at six per cent (6%) per annum from August 30, 1935.

XVII.

That upon the death of said John P. Paul on May 5, 1926, although notice of said lien was not filed of record until December 26, 1935, a lien in favor of plaintiff herein for the unpaid estate tax and interest attached on May 5, 1926 to diverse and sundry parcels of real estate comprising the statutory gross estate of said John P. Paul at the time of his death and still attaches to said real estate in accordance with the provisions of Section 315 of the Revenue Act of 1926, as amended by Section 613(b) of the Revenue Act of 1928 and as further amended by Sections 803(c) and 809 of the Revenue Act of 1932.

XVIII.

That the said premises and parcels of real estate, subject to said lien for said federal estate tax and interest, as hereinbefore set forth, are more particularly known and described as follows, to-wit:

Parcel 1. Lot 73 and the South 9 feet of Lot 70, Houghton Section of the Brush Farm, north of Gratiot Avenue, as subdivided into lots by J. Abrey, according to the plat thereof recorded in Liber 7, page 174, of City Records in the office of the Register of Deeds for County of Wayne. Also known

as 1712 Brush Street, the northeast corner of Madison Avenue and Brush Street, City of Detroit, Michigan.

Parcel 2. Lot 31 Houghton Section of the Brush Farm, north of Gratiot Avenue, as subdivided into lots by J. Abrey, according to the plat thereof recorded in Liber 7, page 174, of City Records in the office of the Register of Deeds for the County of Wayne. Also known as 402-6 Elizabeth Street, East, the southeast corner of Elizabeth and Brush Streets, and 412 to 14 Elizabeth Street, East, City of Detroit, Michigan.

2a. Lot 32 Houghton Section of the Brush Farm, north of Gratiot Avenue, as subdivided into lots by J. Abrey, according to the plat thereof recorded in Liber 7, page 174, of City records in the office of the Register of Deeds for the County of Wayne. Also known as 402-6 Elizabeth Street, East, the southeast corner of Elizabeth and Brush Streets, and 412 to 14 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 3. Lots 6, 7 and 8 of the South part of Out Lot 174, Lambert Beaubien Farm, according to the plat thereof recorded in Liber 1, page 22 of Plats, Wayne County Records. Also known as 424 Elizabeth Street, East, and 428-34 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 4. The North 46.05 feet of Lot 11, of the Plat of Brush subdivision of Park Lot 5 and part of Brush Farm East of and adjoining Park Lots 5 and 4, City of Detroit, made by Edmund Adelaide and Alfred Brush, according to the plat thereon recorded in Liber 45, page 121, of Deeds, Wayne County Records. Also known as 2226-34 Brush Street, the southeast corner of Brush and Montcalm Streets, City of Detroit, Michigan.

Parcel 5. Lots 67, 68 and 69 of Williams subdivision of Park Lots 1, 2, 3, and 4, according to the plat thereof recorded in Liber 1, page 39, of Plats, Wayne County Records. Also known as 215-219 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 6. The East 30 feet of Lot 28, Houghton Section of the Brush Farm, north of Gratiot Avenue, as subdivided into lots by J. Abrey, according to the plat thereof recorded in Liber 7, page 174, of City Records in the office of the Register of Deeds for the County of Wayne. Also known as 264 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 7. East 60 feet of the West 78.21 feet of Lot 4 of Plat of the subdivision of Lot 13 of the subdivision of Park Lot 5 and part of Brush Farm, according to the plat thereof recorded in Liber 45, page 121, of Deeds, Wayne County Records. Also known as 249-255 Montcalm East, City of Detroit, Michigan.

Parcel 8. The East 55 feet of Lot 4, Plat of Brush subdivision of Park Lot 5 and part of Brush farm east of and adjoining Park Lots 4 and 5, according to the plat thereof recorded in Liber 45, page 121, of Deeds, Wayne County Records. Also known as the Southwest Corner of Vernor Highway and John R Street, City of Detroit, Michigan.

Parcel 9. Lots 24 and 25, Winder subdivision of Park Lots 6 and 7, according to the plat thereof recorded in Liber 46, page 561, of Deeds, Wayne County Records. Also known as the Northwest Corner of Vernor Highway and John R. Street, City of Detroit, Michigan.

Parcel 10. The South 30 feet of Lots 13 and 14, Winder subdivision of Park Lots 6 and 7, according to the plat thereof recorded in Liber 46, page 561, of Deeds, Wayne County Records. Also known as 2439 John R. Street, West side, City of Detroit, Michigan.

Parcel 11. The North 61.44 feet of Lot 13, and the North 61.44 feet of Lot 14, Block 31, of Fisher & Shearer's subdivision of Park Lots 30 and 31, according to the plat thereof recorded in Liber 1, page 7 of Plats, Wayne County Records. Also known as 4418-20-24 John R. Street, City of Detroit, Michigan.

Parcel 12. Lots 23, Block 31, of Fisher & Shearer's subdivision of Park Lots 30 and 31, according to the plat thereof recorded in Liber 1, page 7 of Plats, Wayne County Records. Also known as 265 Canfield Avenue, City of Detroit, Michigan.

Parcel 13. Rear North 38 feet of the South 76 feet of Lots 42 and 43 of Hubbard & King's Subdivision of Park Lot 46, according to the plat thereof recorded in Liber 6, page 86 of Plats, Wayne County Records. Also known as 6039-41 John R. Street, West side, City of Detroit, Michigan.

Parcel 14. South 38 feet of Lots 42 and 43 of Hubbard and King's Subdivision of Park Lot 46, according to the plat thereof recorded in Liber 6, page 86 of Plats, Wayne County Records. Also known as 6047 John R. Street, West side, City of Detroit, Michigan.

Parcel 15. Lot 104 of P. McGinnis' Subdivision of Lots 1 to 9 inclusive, of McCune's Subdivision of part of fractional Section 31, according to the plat thereof recorded in Liber 4, page 93 of Plats, Wayne County Records. Also known as 286 Baltimore E., Ave., City of Detroit, Michigan.

Parcel 16. Lot 37 Frisbee and Foxen's Subdivision of part of fractional section 31 and Lot 18 of Theodore J. and Denis J. Campau's subdivision of fractional sections 29 and 32, T. 1 S., R. 12 E., according to the plat thereof recorded in Liber 6, page 78 of Plats, Wayne County Records. Also known as 301 Milwaukee Ave., E., City of Detroit, Michigan.

Parcel 17. Lot 77 and the Westerly 1 foot to the rear of Lot 78 of Lowe's subdivision of Lot 1, Quarter Section 44, T.T.A.T., Hamtramck, Wayne County, Michigan, according to the plat thereof recorded in Liber 8, page 26 of Plats, Wayne County Records. Also known as 656 Euclid Ave., E., City of Detroit, Michigan.

Parcel 18. Lot 42, Joseph R. McLaughlin's Subdivision of the Westerly 13¾ acres of Lot 5 and the Northwesterly 6¼

acres of Lot 4 of the Subdivision of Quarter Section 44, T.T.A.T., Detroit, Wayne County, Michigan, according to the plat thereof recorded in Liber 16, page 28 of Plats, Wayne County Records. Also known as 206 King Avenue, City of Detroit, Michigan.

Parcel 19. Lot 57, Joseph R. McLaughlin's Subdivision of the Westerly 13¾ acres of Lot 5 and the Northwesterly 6¼ acres of Lot 4 of the Subdivision of Quarter Section 44, T.T.A.T., Detroit, Wayne County, Michigan, according to the plat thereof recorded in Liber 16, page 28 of Plats, Wayne County Records. Also known as 207 King Avenue, City of Detroit, Michigan.

Parcel 20. Lot 43, Plat of Crane & Wesson's Section of Antoine Beaubien Farm, according to the plat thereof recorded Feb. 19, 1849, in Liber 35, page 200½ of Deeds, Wayne County Records. Also known as 564 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 21. Lot 35, Crane & Wesson's Subdivision of Out Lot 173, Lambert Beaubien Farm, according to the plat thereof recorded in Liber 35, page 201 of Deeds, Wayne County Records. Also known as 2018-22 Beaubien Street, City of Detroit, Michigan.

Parcel 22. Lot 9, Blocks 2 and 3, Van Dyke Section of the Antoine Beaubien Farm, according to the plat thereof recorded in Liber 1, page 122 of Plats, Wayne County Records. Also known as 548 Vernor Highway, East, City of Detroit, Michigan.

Parcel 23. Lot 36, except the rear 50 feet, of Cleland & Cowies Subdivision of the West 236 feet of the A. Beaubien Farm, between Fremont Street and Warren Avenue, City of Detroit, Wayne County, Michigan, according to the plat thereof recorded in Liber 9, page 40 of Plats, Wayne County Records. Also known as 583-7 Canfield Ave., Northwest corner of Canfield Avenue and St. Antoine Street, City of Detroit, Michigan.

Parcel 24. Lot 113 of Crane & Wesson's Subdivision of the L. Moran Farm, North of Gratiot Ave., according to the plat thereof recorded in Liber 1, page 125 of Plats, Wayne County Records. Also known as 962 Napoleon Street, City of Detroit, Michigan.

Parcel 25. Lot 42, S. B. Morse's Subdivision of part of Lot 3, North of Gratiot Street, Mullett Farm, Private Claims 7 and 132, according to the plat thereof, recorded in Liber 46, page 514 of Deeds, Wayne County Records. Also known as 1336 Alfred Street, City of Detroit, Michigan.

Parcel 26. Lot 47 Miller and Hallock's Subdivision of Lot 9 and part of 10, G. Hunt farm, according to the plat thereof recorded in Liber 5, page 22, of Plats, Wayne County Records. Also known as 3289 Congress Street, City of Detroit, Michigan.

Parcel 27. Lot 11 Wirth's resubdivision of the N. part of Lot 13, Lieb farm, City of Detroit, Wayne County, Michigan, T. 2 S., R. 12 E., according to the plat thereof recorded in Liber 6, page 83 of plats, Wayne County Records. Also known as 3647 Arndt Street, City of Detroit, Michigan.

Parcel 28. Lot 4, Block 27, of the subdivision of part of James Campau farms, East ½ P.C. 91, according to the plat thereof recorded in Liber 2, Page 18 of Plats, Wayne County Records. Also known as 2253 Watson Street, City of Detroit, Michigan.

Parcel 29. East 28 feet of Lot 1, and the West 2 feet of Lot 2, Yeman's subdivision of that portion of Out Lot 193 lying between Farnsworth Street and Theodore Street, of the subdivision of the L. Beaubien farm, City of Detroit, Wayne County, Michigan, according to the plat thereof recorded in Liber 10, page 79, of Plats, Wayne County Records. Also known as 504 Farnsworth Avenue, the Southeast corner of Farnsworth and Beaubien Street, City of Detroit, Michigan.

Parcel 30. Lot 13, Block 13, of the Plat of Subdivision of the Crane farm, being the rear concession of P.C. 247, between

Hancock and Brainard, according to the plat thereof recorded August 9, 1855, in Liber 60, Page 58, of Deeds, Wayne County Records. Also known as 4438 Fourth Avenue, City of Detroit, Michigan.

Parcel 31. Lots 11 and 12, Block 8, of the Plat of Subdivision of the Crane farm, being the rear concession of P.C. 247, between Hancock and Brainard, according to the plat thereof recorded August 9, 1855, in Liber 60, Page 58, of Deeds, Wayne County Records. Also known as 4414-20-22 Fourth Avenue, City of Detroit, Michigan.

Parcel 32. Lot 23, Block 81, Plat of the Subdivision of the Jones farm, north of Grand River Avenue, Detroit, according to the plat thereof recorded in Liber 6, page 7, of Plats, Wayne County Records. Also known as 3486 Fourth Avenue, City of Detroit, Michigan.

Parcel 33. Lot 15, Block 68, and Lot 16, Block 68, of the Cass Western Addition to the City of Detroit, between the Chicago Road and the Grand River Road, according to the plat thereof recorded in Liber 42, pages 138-139, 140 and 141 of Deeds, Wayne County Records. Also known as 2220 Third Street, City of Detroit, Michigan.

Parcel 34. Lot 83, Subdivision of the South part of Out Lot 95, Woodbridge farm, Detroit, Michigan, according to the plat thereof recorded in Liber 1, page 181, of Plats, Wayne County Records. Also known as 2800 Trumbull Avenue, City of Detroit, Michigan.

Parcel 35. Lot 48, Wm. B. Wesson's subdivision of Out Lots 6, 7, south part of Out Lot 5, on P. C. No. 25, being rear concession to the Logan farm. Also Out Lots 13, 17 and 18, Thompson Farm, City of Detroit, P. C. 25, according to the plat thereof recorded in Liber 10, page 56, Plats, Wayne County Records. Also known as 5002 Avery Avenue, City of Detroit, Michigan.

Parcel 36. The East 37 feet of the West 44 feet of Lot A, S. B. Grummond's Subdivision of North 187 feet of Lot 11,

and South 63 feet of Lot 12, Baker Farm, Detroit, Michigan, according to the plat thereof recorded in Liber 11, page 60, of Plats, Wayne County Records. Also known as 1348 Perry Street, City of Detroit, Michigan.

Parcel 37. The West 50 feet of Lot 25, Block 94, William L. Woodbridge's Subdivision, Plat of Blocks 93 and 94, and the North part of J. T. Abbott's Lot, Woodbridge Farm, Detroit, Wayne County, Michigan, T. 2 S., R. 12E., according to the plat thereof recorded in Liber 4, page 82, of Plats, Wayne County Records. Also known as 1528 Perry Street, City of Detroit, Michigan.

Parcel 38. The East 100 feet of Lot 98, McKeown's Subdivision of the South part of Out Lot 96, Woodbridge Farm, City of Detroit, Wayne County, Michigan, T. 2 S., R 12 E., according to the plat thereof recorded in Liber 3, page 50 of Plats, Wayne County Records. Also known as 3003-7 Trumbull Avenue, City of Detroit, Michigan.

Parcel 39. Lot 4 of J. Marr's Subdivision of Lots 40 and 41 and the North 18.5 feet of Lot 39, Thompson Farm, Detroit, Wayne County, Michigan, according to the Plat thereof recorded in Liber 10, page 94 of Plats, Wayne County Records. Also known as 2903 Twelfth Street, City of Detroit, Michigan.

Parcel 40 and Parcel 41. Lots 3 and 4 of the South part of Out Lot 174, Lambert Beaubien Farm, according to the plat thereof recorded in Liber 1, page 22 of Plats, Wayne County Records. Also known as 440 Elizabeth Street East, City of Detroit, Michigan.

Parcel 42. The West 25 feet of the East 50 feet of Lot 26 and 25, of Crane & Wesson's Subdivision of Out Lot 173, Lambert Beaubien Farm, according to the plat thereof recorded February 19, 1849, in Liber 35, Page 201 Deeds, Wayne County Records. Also known as 514 Adams Avenue, East, City of Detroit, Michigan.

Parcel 43. Lot 21, Albert Crane's Subdivision of Out Lot 186, Lambert Beaubien Farm, Detroit, Michigan, according

to the plat thereof recorded in Liber 1, Page 8, of Plats, Wayne County Records. Also known as 425-9 Superior Street, City of Detroit, Michigan.

Parcel 44. Lot 2, Theodore J. and Denis J. Campau, Subdivision of Out Lot 175, Lambert Beaubien Farm, Joseph Campau Estate, containing 4.01 acres, according to the plat thereof recorded in Liber 2, Page 3 of Plats, Wayne County Records. Also known as 506 Elizabeth Street, City of Detroit, Michigan.

Parcel 45. Lot 85, Albert Crane's Section of the Thompson Farm, being part of P. C. 227. Late Springwells, now Detroit, Michigan, according to the plat thereof recorded in Liber 1, Page 11, of Plats, Wayne County Records. Also known as 1931 Linden Street, City of Detroit, Michigan.

Parcel 46. Lot 53 and the South 16 feet of Lot 57, of Larned's Subdivision on the Lafferty Farm, according to the plat thereof recorded July 24, 1855, in Liber 60, Pages 2-3 of Deeds, Wayne County Records. Also known as 2515-21 Vermont Street, Detroit, Michigan.

Parcel 47. Lot 28 and the East 12.83 feet of Lot 27, Chidsey's Subdivision of the South half of Lot 4 and the North part of Lot 3, of Quarter Section 4, T.T.A.T. Hamtramck, Wayne County, Michigan, according to the plat thereof recorded in Liber 9, Page 85, of Plats, Wayne County Records. Also known as 13920 John R. Street, the Northeast corner of John R. Street and Gerald Avenue, Highland Park, Michigan.

Parcel 48. Lot 232 of Woodruff's Subdivision of Lot 3, Lafferty Farm, P. C. 228, South of Grand River Avenue, according to the plat thereof recorded in Liber 2, Page 32, of Plats, Wayne County Records. Also known as 1950 Myrtle Street, City of Detroit, Michigan.

Parcel 49. All of Lot 20, and the North 11 feet of Lot 19, Albert Crane's Section of the Labrosse and Baker Farms, being Lots 20 to 33 inclusive of Wesson Section of the Labrosse and Baker Farms, Detroit, Michigan, according to the plat

thereof recorded in Liber 1, Page 123, of Plats, Wayne County Records. Also known as 4123 Sixth Street, City of Detroit, Michigan.

Parcel 50. Lots 1 and 2 of Northwood's Subdivision of part of the Loranger Farm, and the Southerly 60 feet of Lots 33, 34 and 35 of B. and J. Stroh's Subdivision of Part of PC 474, Loranger Farm, South of D. M. and T.R.R., Detroit, Wayne County, Michigan, according to the plat thereof recorded in Liber 22, page 19, of Plats, Wayne County Records. Also known as 4495-7 Humboldt Avenue, City of Detroit, Michigan.

XIX.

That there are no assets in the Estate of John P. Paul, deceased, from which the sum owing to plaintiff for Federal estate tax and interest now due and unpaid can be collected.

XX.

That subsequent to May 5, 1926, to date of death of said John P. Paul, certain of the parcels of real estate hereinbefore described, have been conveyed and encumbered as follows, to-wit:

Parcel 1. Mortgaged by Lena Paul, widow of John P. Paul, to the Detroit Savings Bank for $20,000.00, on July 23, 1930, said mortgage being recorded July 25, 1930, in Liber 2506, Page 207 of Mortgages, Wayne County Records. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Subject of a Sheriff's Deed dated May 18, 1934 to the Detroit Savings Bank in the foreclosure of the aforementioned mortgage, said deed being recorded June 6, 1934 in Liber 4183, Page 56 of Deeds, Wayne County Records. Parcel now in control of Ernest H. King, Receiver, in that certain cause designated as Chancery No. 241,203, in the Wayne County Circuit Court. Said parcel

is subject to the Claim of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935, inclusive, the former in the amount of $1,396.37 plus interest, and the latter in the amount of $583.59.

Parcel 2. Mortgaged by Lena Paul, widow of John P. Paul, to the Detroit Savings Bank for $18,000.00, on February 8, 1927, said mortgage being recorded on February 15, 1927 in Liber 1898, Page 1 of Mortgages, Wayne County Records. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Subject of a Sheriff's deed dated May 18, 1934, to the Detroit Savings Bank in the foreclosure of its aforementioned mortgage, said deed being recorded June 6, 1934, in Liber 4183, Page 41 of Deeds, Wayne County Records. Parcel now in control of Ernest H. King, receiver in that certain cause designated as Chancery No. 241,203, in the Wayne County Circuit Court. Said parcel is subject to the claim of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, and to the claim of the City of Detroit for unpaid taxes for the years 1931, 1933, 1934 and 1935, the former in the amount of $387.81, and the latter in the amount of $2,145.86, plus interest.

Parcel 2a. Conveyed by Oscar Bowman to John W. Paul, Nettie Paul and Amelia Paul, all unmarried, as joint tenants and not tenants in common, by a warranty deed dated December 21, 1927, said deed being recorded January 26, 1928 in Liber 2778, Page 7 of Deeds, Wayne County Records. Conveyed by above grantees to Frederick P. Paul and Ruby Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as tenants by the entireties, by a quit claim deed dated September 27, 1927, and

recorded September 28, 1933 in Liber 4012, Page 184 of Deeds, Wayne County Records. Said parcel was listed among the gross assets of the Estate of John P. Paul, deceased, as a land contract payable in which Oscar Bowman held the vendor's interest. Said parcel is subject to the claim of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, the former amount being $160.77, and the latter $1,466.29 plus interest.

Parcel 3. Conveyed by Lena Paul, widow of John P. Paul, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, single, Frederick P. Paul and Ruby Paul, his wife, Nettie B. Paul, unmarried, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly as an estate by the entireties, and Riney F. Paul and Jessie, his wife, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933, and recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Said parcel is subject to the claim of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, the former in the amount of $418.37, and the latter in the sum of $1,353.89. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie, one of the defendants herein.

Parcel 4. Conveyed by Barnet Poliat and Jane Poliat, his wife, to Lena Paul by a warranty deed dated September 20, 1926, and recorded September 21, 1926, in Liber 2428, Page 559 of Deeds, Wayne County Records. Mortgaged by Lena Paul to the Detroit Savings Bank for $20,000, on October 9,

1926, said mortgage being recorded in Liber 1827, Page 387 of Mortgages, Wayne County Records. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613 of Deeds, Page 291, Wayne County Records. Conveyed by Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul, to John W. Paul and Nettie B. Paul. Subject to a Sheriff's Deed dated May 18, 1934, to the Detroit Savings Bank in the foreclosure of its aforementioned mortgage, said deed being recorded in Liber 4183, Page 36 of Deeds, Wayne County Records, on June 6, 1934. Parcel now in control of Ernest H. King, appointed Receiver in that certain cause designated as Chancery No. 241,203, in the Circuit Court for the County of Wayne. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934, inclusive, and to the claim of the City of Detroit for unpaid taxes for the years 1933 to 1935 inclusive, the former in the amount of $345.50; and the latter in the amount of $1,513.69, plus interest.

Parcel 5. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul, and Charles P. Paul, by a deed dated February 13, 1931, and recorded June 20, 1931, in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, single, Frederick P. Paul and Ruby Paul, his wife, Nettie B. Paul, unmarried, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul, unmarried, to Frederick P. Paul and Ruby H. Paul, his wife, jointly as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly, as an estate by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid

taxes for the years 1932 to 1934 inclusive, in the sum of $362.93, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the total sum of $2,723.27, plus interest. 1931 and 1932 taxes are under the Seven Year Plan.

Parcel 6. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, jointly as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $339.54, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $1,180.84, plus interest. Taxes of the City of Detroit for the year 1930 were sold to Charles H. Wiltsie, one of the within named defendants.

Parcel 8. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933, and recorded September 30, 1933 in Liber 4012, Page 186 of Deeds, Wayne

County Records. Prior to said deed just mentioned, the grantors mortgaged the premises to the Detroit Savings Bank. Said mortgage, dated June 22, 1931, in the amount of $28,000.00, was recorded June 30, 1931 in Liber 2601, Page 272 of Mortgages, Wayne County Records. Parcel is the subject of a Sheriff's Deed dated May 18, 1934, to the Detroit Savings Bank in the foreclosure of its aforementioned mortgage, said deed being recorded June 6, 1934 in Liber 4182, Page 595 of Deeds, Wayne County Records. Parcel now in custody of Ernest H. King, appointed Receiver in that certain cause designated as Chancery No. 241,203, Wayne County Circuit Court. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, and the claim of the City of Detroit for unpaid taxes for the years 1931 and 1933 to 1935 inclusive, the former in the sum of $971.74, and the latter in the sum of $3,989.88, plus interest.

Parcel 9. Mortgaged by John P. Paul and Lena Paul, his wife, to the Detroit Savings Bank for $35,000.00 on September 22, 1924, said mortgage being recorded September 23, 1924 in Liber 1371, Page 118 of Mortgages, Wayne County Records. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul, unmarried, to John W. Paul, single, and Nettie B. Paul, unmarried, by a quit claim deed dated September 27, 1933, and recorded September 28, 1933 in Liber 4012, Page 196 of Deeds, Wayne County Records. Said parcel is the subject of a Sheriff's Deed, dated May 18, 1934, to the Detroit Savings Bank on the foreclosure of its mortgage, as hereinbefore set forth, said deed being recorded June 6, 1934 in Liber 4153, Page 51 of Deeds,

Wayne County Records. Parcel now held by Ernest H. King, appointed receiver in that certain proceedings designated as Chancery No. 241,203, in the Wayne County Circuit Court. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, in the amount of $1,621.87, and to the claim of the City of Detroit for unpaid taxes for the years 1933 to 1935, inclusive, in the sum of $5,711.71, plus interest.

Parcel 10. Mortgaged by Lena Paul, widow of John P. Paul, deceased, to the Detroit Savings Bank for $25,000.00 on October 8, 1927, said mortgage being recorded October 12, 1927 in Liber 2027, Page 356 of Mortgages, Wayne County Records. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by quit claim deed dated February 13, 1931, and recorded June 20, 1931, in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul, unmarried, to John W. Paul, single, and Nettie B. Paul, unmarried, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 196 of Deeds, Wayne County Records. Subject of a Sheriff's Deed to the Detroit Savings Bank dated May 25, 1934, and recorded June 14, 1934 in Liber 4185, Page 478 of Deeds, Wayne County Records, in foreclosure of its aforementioned mortgage. Parcel now held by Ernest H. King, as Receiver in that proceedings designated as Chancery No. 241,203, in the Circuit Court for the County of Wayne. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, in the amount of $253.98, and to the claim of the City of Detroit for unpaid taxes for the years 1933 to 1935 inclusive, in the sum of $909.01, plus interest.

Parcel 11. Mortgaged by Lena Paul, widow of John P. Paul, deceased, to the Detroit Savings Bank for $18,000.00

on August 1, 1929, said mortgage being recorded August 5, 1929 in Liber 2363, Page 440, of Mortgages, Wayne County Records. Conveyed by Lena Paul to Frederick P. Paul, John W. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul, and Charles P. Paul by a deed dated February 13, 1931 recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul, unmarried, to John W. Paul, single, and Nettie B. Paul, unmarried, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 196, of deeds, Wayne County Records. Subject of a Sheriff's Deed, dated May 18, 1934, to the Detroit Savings Bank, under the foreclosure of its aforementioned mortgage, said deed being recorded in Liber 4183, Page 46, of Deeds, Wayne County Records. Parcel now held by Ernest H. King under the receivership created in the proceedings in Chancery No. 241,203, Wayne County Circuit Court. Said parcel is also subject to claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, in the sum of $208.92, and to the claim of the City of Detroit for unpaid taxes for the years 1933 to 1935 inclusive, in the amount of $712.01, plus interest. Taxes for the year 1929 on this parcel were sold to M. Faust, a defendant named in this bill, said taxes being sold to him by the City of Detroit.

Parcel 12. Conveyed by Lena Paul, widow of John P. Paul, deceased, to Frederick P. Paul, John W. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a deed dated February 13, 1931 and recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, single, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, unmarried, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul, unmarried, to Frederick P. Paul and Ruby H. Paul, his wife, jointly as an estate by the entireties, and Riney F. Paul and Jessie B.

Paul, his wife, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933, in Liber 4012, Page 186, of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $258.41, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the amount of $913.84, plus interest. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie, a defendant named in this bill.

Parcel 13. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, single, Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul, unmarried, to Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul, and Jessie B. Paul, his wife, and Amelia L. Paul, unmarried, to Frederick P. Paul and Ruby H. Paul, his wife, jointly as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933, in Liber 4012, Page 186 of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $170.49, and to the claim of the City of Detroit for unpaid taxes, for the years 1931 to 1935 inclusive, in the sum of $528.81, plus interest. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie, one of the defendants named, on June 1, 1931.

Parcel 14. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed

dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, single, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, unmarried, Riney F. Paul and Jessie B. Paul, his wife and Amelia L. Paul, unmarried, to Frederick P. Paul, and Ruby H. Paul, his wife, jointly as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 186, of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $210.24, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $781.47, plus interest. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie, one of the defendants named, on June 1, 1931.

Parcel 15. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul, and Charles L. Paul, by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul, and Ruby H. Paul, his wife, Amelia L. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Nettie B. Paul to Frederick P. Paul, and Ruby Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as tenants by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, page 186, of Deeds, Wayne County Records. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $137.84 and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $464.78, plus interest. Taxes for the year 1930 were

sold by the City of Detroit to Charles H. Wiltsie, one of the defendants named, on June 1, 1931.

Parcel 16. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul, and Jessie B. Paul, his wife, jointly as tenants by the entireties, by a quit-claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012 Deeds, Page 186, Wayne County Records. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the amount of $246.58, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive in the sum of $822.30, plus interest. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie, one of the defendants herein named, on June 1, 1931.

Parcel 17. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931, in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul, and Jessie B. Paul, his wife, jointly as tenants by the entireties by a quit-claim deed dated September 27, 1933 and recorded September 28, 1933 in Liber 4012, Page 186, of Deeds, Wayne County Records. Said parcel is subject to the claims

of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $97.45, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $348.39, and to the claim of the City of Detroit for taxes for the year 1930 which was sold to Charles H. Wiltsie on June 1, 1931.

Parcel 18. Mortgaged by John P. Paul and Lena Paul, his wife, to Edward H. Rogers, for the sum of $10,000.00, on June 8, 1923, said mortgage being recorded June 9, 1923 in Liber 1210, Page 412, of Mortgages, Wayne County Records. Said mortgage was made to Edward H. Rogers as Trustee for Charles Fuller, incompetent, of Farmington, Michigan. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by Frederick P. Paul and Ruby Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to John W. Paul and Nettie B. Paul by a quit-claim deed dated September 27, 1933, recorded September 28, 1933, in Liber 4012, Page 196, of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, the former in the sum of $365.27, and the latter in the sum of $1326.21. Taxes for the year 1930 were sold to Charles H. Wiltsie on June 1, 1931.

Parcel 19. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul and Nettie B. Paul by a quit-claim deed dated February 13, 1931 and recorded September 28, 1933 in Liber 4012, Page 173, of Deeds, Wayne County Records. Said conveyance was made subject to the mortgage made by John P. Paul and Lena Paul, his wife, to George S. Hickey, for $12,000.00, on March 1, 1920, as recorded March

15, 1920 in Liber 970, Page 360, of Mortgages, Wayne County Records, and subject to the balance, if any due under the mortgage to the Union Trust Company dated July 10, 1922 and recorded September 21, 1922 in Liber 1101, Page 584, of Mortgages, Wayne County Records. The mortgagee's interest in the aforementioned Hickey mortgage was listed as an asset of the Estate of the said George S. Hickey, deceased, of which T. Paul Hickey was administrator, and an heir at law with Julia Blanch Hickey, his sister, as shown by the file in the Probate Court for the County of Wayne, file number 146,313, and included in the distribution made to the said T. Paul Hickey and the said Julia Blanche Hickey by her guardian, Howard J. Ely, appointed under proceedings in Probate Court, file number 146,312, Wayne County. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $356.86, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $1,313.87, plus interest. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie on June 1, 1931.

Parcel 20. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul, and Charles P. Paul under a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records, said conveyance being subject to that certain mortgage made by Barnet Poliat and Jane Poliat, his wife, to the Detroit Savings Bank on April 24, 1920 and recorded May 4, 1920, in Liber 986, Page 400, of Mortgages, Wayne County Records, said mortgage having been assumed by John P. Paul and Lena Paul, his wife, on conveyance to them by Barnet Poliat and Jane Poliat, his wife. Conveyed by Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to John W. Paul and

Nettie B. Paul by a quit-claim deed dated September 27, 1933 and recorded September 28, 1933 in Liber 4012, Page 196, of Deeds, Wayne County Records. Subject of a Sheriff's Deed to the Detroit Savings Bank, dated September 7, 1934, recorded September 27, 1934 in Liber 4254, Page 421, of Deeds, Wayne County Records. Said parcel also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the year 1934 and to the claim of the City of Detroit for unpaid taxes 1933 to 1935 inclusive, the former in the sum of $25.55 and the latter in the sum of $359.40.

Parcel 21. Conveyed by Elias H. Setters, Administrator of the Estate of Marion M. Young, deceased, to Nettie Paul and John W. Paul, sister and brother, as tenants in common, by a warranty deed dated September 12, 1929, recorded September 12, 1929 in Liber 3226, Page 165, of Deeds, Wayne County Records. Conveyed by Nettie Paul and John W. Paul to Frederick P. Paul and Ruby Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as tenants by the entireties, by a quit-claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 194, of Deeds, Wayne County Records. Subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $442.98, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive in the sum of $1,550.97, plus interest. Taxes for the year 1930 were sold to Charles H. Wiltsie by the City of Detroit on June 1, 1931. Said parcel was included in the gross estate of John P. Paul, deceased, as a land contract payable.

Parcel 22. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul,

his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, Amelia L. Paul to Frederick P. Paul and Ruby Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as tenants by the entireties, by a quit-claim deed dated September 27, 1933 recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Subject also to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $173.71, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $637.74, plus interest. Taxes for the year 1930 were sold by the City of Detroit to Charles Wiltsie on June 1, 1931.

Parcel 23. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul, and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records, subject to a mortgage of $6,000.00 to E. C. Chilas, Oulette Ave., Windsor, Ontario, Canada, as listed in the Estate Tax return for the Estate of John P. Paul, deceased. Conveyed by John W. Paul, Frederick P. Paul and Ruby Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly, as tenants by the entireties, in a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 186, of Deeds, Wayne County Records. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive in the sum of $323.70, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $1,253.72, plus interest. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie on June 1, 1931.

Parcel 24. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby Paul, his wife, jointly, as tenants by the entireties, and Riney F. Paul, and Jessie B. Paul, jointly, as tenants by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933, in Liber 4012, Page 186, of Deeds, Wayne County Records. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $78.21, and to the claim of the City of Detroit for taxes for the years 1931 to 1935 inclusive, in the sum of $287.27, plus interest. Taxes for the year 1930 were sold on June 1, 1931 to Charles H. Wiltsie.

Parcel 25. Conveyed by John L. Herschman and Gertrude Herschman, his wife, and Charlotte Herschman to Frederick P. Paul and Ruby Paul, his wife, jointly, as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly, as an estate by the entireties, on October 30, 1930, recorded September 28, 1933 in Liber 4012, Page 175, of Deeds, Wayne County Records. Said parcel is listed as a land contract payable in the Estate of John P. Paul, deceased, according to the return filed. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for taxes for the years 1931 to 1934 inclusive, in the sum of $100.21, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $497.47. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie on June 1, 1931.

Parcel 26. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly, as an estate by the entireties, and Riney F. Paul, and Jessie B. Paul, his wife, jointly, as an estate by the entireties by a quit claim deed dated September 27, 1933 and recorded September 28, 1933 in Liber 4012, Page 186, of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $94.95, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $448.95, plus interest.

Parcel 27. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931 and recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, jointly, as tenants by the entireties, by a quit claim deed dated September 27, 1933 and recorded September 28, 1933 in Liber 4012, Page 186, of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $66.37, and to the claim of the City of Detroit for unpaid

taxes for the years 1930 to 1935 inclusive, in the sum of $312.19, plus interest.

Parcel 28. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933, and recorded in Liber 4012, Page 186 of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $53.80, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, of which the 1930, 1931 and 1932 taxes have been placed on the "Seven Year Plan," in the sum of $250.72, plus interest.

Parcel 29. Mortgaged by John P. Paul and Lena Paul, his wife, to the Detroit Trust Company for $2,000.00 on November 6, 1907, said mortgage being recorded on November 7, 1907 in Liber 502, Page 204 of Mortgages, Wayne County Records. Conveyed by Lena Paul, widow of John P. Paul, deceased, subject to above mortgage, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby Paul, his wife, and Riney F. Paul and Jessie B. Paul, his wife, both jointly and as tenants by

the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $218.75, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $1,054.36, plus interest.

Parcel 30. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as tenants by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $165.92, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $528.83, plus interest. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie on June 1, 1931. Taxes for the year 1929 were sold by the City of Detroit on June 1, 1930, to M. Faust.

Parcel 31. Mortgaged by Lena Paul, widow of John P. Paul, deceased, to the Detroit Savings Bank on July 11, 1928, for $13,400.00, said mortgage being recorded July 16, 1928 in Liber 2171, Page 528 of Mortgages, Wayne County Records. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia Paul and Charles P. Paul by a deed dated February 13, 1931, and recorded June

20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Nettie B. Paul to John W. Paul and Amelia L. Paul by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 196 of Deeds, Wayne County Records. Subject of Sheriff's Deed to the Detroit Savings Bank dated May 18, 1934, of record June 6, 1934, in Liber 4182, Page 615 of Deeds, Wayne County Records. Parcel now held by Ernest H. King, appointed Receiver in the proceedings recorded in Chancery No. 241,203, in the Wayne County Circuit Court. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, in the sum of $179.31, and to the claim of the City of Detroit for unpaid taxes for the years 1933 to 1935 inclusive, in the sum of $363.12, plus interest.

Parcel 32. Mortgaged by Lena Paul, widow of John P. Paul, deceased, to the Detroit Savings Bank for $9,000.00 on July 11, 1928, said mortgage being recorded July 16, 1928 in Liber 2171, Page 525 of Mortgages, Wayne County Records. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Nettie B. Paul to John W. Paul and Amelia L. Paul by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Subject of a Sheriff's Deed to the Detroit Savings Bank, dated May 18, 1934, and recorded June 6, 1934 in Liber 4183, Page 26 of Deeds, Wayne County Records, on foreclosure of above mortgage. Parcel now held by Ernest H. King, appointed Receiver in the proceedings recorded in Chancery No. 241,203, in the Wayne County Circuit Court. Said parcel is subject to

the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, in the sum of $95.39, and the claim of the City of Detroit for unpaid taxes for the years 1933 to 1935 inclusive, in the sum of $322.42, plus interest.

Parcel 33. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly, as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933, and recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $725.18, and the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $2,601.34, plus interest. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie on June 1, 1931.

Parcel 34. Previously mortgaged by John P. Paul and Lena Paul, his wife, to the Union Trust Company for $6,000.00, on December 1, 1923, said mortgage having been recorded in Liber 1305, Page 180 of Mortgages, Wayne County Records, on December 4, 1923. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul on February 13, 1931, by a deed recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, Nettie B. Paul and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly

as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as tenants by the entireties, by a quit claim deed dated September 27, 1933, and recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. The aforementioned mortgage to the Union Trust Company was assigned by it to E. B. Finley, Jr., M. E. Bowlus, and E. A. Edwards, as liquidating trustees under that certain deed of trust recorded in Liber 4166, Page 305 of Deeds, Wayne County Records, by an assignment dated May 26, 1934, and recorded July 1, 1934 in Liber 267, Page 171 of Assignments of Mortgages, Wayne County Records. Said parcel is subject also to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $273.28, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935, the years 1930, 1931 and 1932 being on the "Seven Year Plan," inclusive, in the sum of $1,330.99, plus interest.

Parcel 35. Previously mortgaged by Wm. McLoughlin to Peoples Wayne County Bank for $4,500.00 on April 16, 1925, recorded April 17, 1925 in Liber 1478, Page 64 of Mortgages, Wayne County Records. Conveyed to Lena Paul by a warranty deed dated September 10, 1926, recorded September 13, 1926, in Liber 2423, Page 413 of Deeds, Wayne County Records. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a quit claim deed dated February 13, 1921, recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly as tenants by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933, in Liber 4012, Page 186 of Deeds, Wayne County Records. Said

parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $373.52, and to the claim of the City of Detroit for unpaid taxes for the years 1933 to 1935 inclusive, in the sum of $687.82, plus interest, listed as land contract in Estate.

Parcel 36. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a deed dated February 13, 1931, and recorded June 20, 1931, in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul, to Frederick P. Paul and Ruby H. Paul, his wife, jointly as an estate by the entireties, and Riney F. Paul, and Jessie B. Paul, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933, and recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Said parcel is subject to the claim of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $120.41, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $579.13, plus interest. City taxes for the years 1930, 1931 and 1932 have been placed in the "Seven Year Plan."

Parcel 37. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles L. Paul by deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly, as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly, as tenants by the

entireties, by a quit claim deed dated September 27, 1933, and recorded September 28, 1933, in Liber 4012, Page 186 of Deeds, Wayne County Records. Said parcel is also subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $134.25, and to the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $623.88, plus interest.

Parcel 38. Mortgaged by Lena Paul, widow of John P. Paul, deceased, to the Detroit Savings Bank on July 16, 1928, for $12,500.00, said mortgage being recorded July 19, 1938, in Liber 2174, Page 76 of Mortgages, Wayne County Records. Conveyed by Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a deed dated February 13, 1931, and recorded June 20, 1931 in Liber 3186, Page 291 of Deeds, Wayne County Records. Conveyed by Frederick P. Paul and Ruby Paul, his wife, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to John W. Paul and Nettie B. Paul by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012 of Deeds, Page 196, Wayne County Records. Subject of a Sheriff's Deed to the Detroit Savings Bank, in the foreclosure of its aforementioned mortgage, dated May 18, 1934, recorded June 6, 1934, in Liber 4183, Page 31 of Deeds, Wayne County Records. Parcel now held by Ernest H. King, appointed receiver in proceedings in Chancery No. 241,203, Wayne County Circuit Court. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1932 to 1934 inclusive, in the sum of $151.14, and to the claim of the City of Detroit for unpaid taxes for the years 1933 to 1935 inclusive, in the sum of $531:40, plus interest.

Parcel 39. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, by a deed

dated February 13, 1931, and recorded June 20, 1931, in Liber 3613, Page 291 of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly, as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly, as tenants by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 186 of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $220.02, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $1,014.26, plus interest.

Parcel 40. Lot 3 mortgaged by John P. Paul and Lena Paul, his wife, to the Detroit Trust Company, for $14,350.00, on July 29, 1903, said mortgage being recorded July 31, 1903 in Liber 441, Page 345 of Mortgages, Wayne County Records. No record of discharge. Lots 3 and 4 conveyed by John P. Paul and Lena Paul, his wife, to Nettie B. Paul, unmarried, by a warranty deed dated June 22, 1925, recorded June 4, 1926, in Liber 2349, Page 219 of Deeds, Wayne County Records. Subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1931 to 1934 inclusive, in the sum of $272.72, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $1,391.70, with interest. Said parcels are listed in the gross estate of John P. Paul, deceased, according to the return filed, as conveyed within the two year period.

Parcel 42. Mortgaged by John P. Paul and Lena Paul, his wife, under the mortgage described above (as recorded in Liber 441, Page 345 of Mortgages, Wayne County Records). Conveyed by John P. Paul and Lena Paul, his wife, to Nettie Paul by a warrant deed dated June 22, 1925, recorded June 4,

1926 in Liber 2343, Page 467 of Deeds, Wayne County Records. Conveyed by Nettie B. Paul to Frederick P. Paul and Ruby H. Paul, his wife, and Riney F. Paul and Jessie B. Paul, his wife, both jointly and as tenants by the entireties, by a quit claim deed dated September 27, 1933, and recorded September 28, 1933 in Liber 4012, Page 192 of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1931 to 1934 inclusive, in the sum of $145.90, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $747.23, with interest. Taxes due to the City of Detroit for the years 1931 and 1932 have been placed on the "Seven Year Plan." Said parcel is listed as having been conveyed with the two year period.

Parcel 43. Conveyed by John P. Paul and Lena Paul, his wife, to Nettie B. Paul, single, by a warranty deed dated June 22, 1925, and recorded June 10, 1926 in Liber 2349, Page 223 of Deeds, Wayne County Records. Conveyed by Nettie Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly, as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly, as an estate by the entireties, by a quit claim deed dated September 27, 1933, and recorded September 28, 1933 in Liber 4012, Page 192 of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1931 to 1934 inclusive, in the sum of $63.41, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $325.13, plus interest. Said parcel is listed as having been conveyed within the two year period.

Parcel 44. Conveyed to Nettie Paul, single, by John P. Paul and Lena Paul, his wife, by a warranty deed dated June 22, 1925, and recorded June 10, 1926 in Liber 2349, Page 221 of Deeds, Wayne County Records. Conveyed by Nettie Paul

to Frederick P. Paul and Ruby H. Paul, his wife, jointly, as an estate by the entireties, and Riney F. Paul and Jessie B. Paul, jointly as an estate by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 192 of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $211.16, and to the claim of the City of Detroit for unpaid taxes for the years 1931 to 1935 inclusive, in the sum of $738.42, with interest. Taxes for the year 1930 were sold by the City of Detroit to Charles H. Wiltsie on June 1, 1931. Said parcel is listed as having been conveyed within the two year period, as per the return for the Estate of John P. Paul, deceased.

Parcel 45. Conveyed by John P. Paul and Lena Paul, his wife, to Amelia L. Paul, single, by a warranty deed dated July 10, 1925, and recorded October 20, 1925 in Liber 2168, Page 481 of Deeds, Wayne County Records. Conveyed by Amelia Paul to Emily Bennett on June 2, 1932, said deed being recorded same day in Liber ——, Page —— of Deeds, Wayne County Records. Conveyed by Emily Bennett to Riney F. Paul and Jessie Paul, his wife, by a warranty deed dated June 5, 1932, recorded August 29, 1934 in Liber 4227, Page 422 of Deeds, Wayne County Records. Mortgaged by Riney F. Paul and Jessie Paul, his wife, to the Union Investment Company, for $3,000.00, on August 18, 1934, recorded August 30, 1934 in Liber 2747, Page 609 of Mortgages, Wayne County Records. The note for which said mortgage was given as security was paid on March 11, 1935, and a discharge of the mortgage alleged to have been given, but same is not of record. The parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $89.71, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935

inclusive, in the sum of $423.24, plus interest. City taxes for the years 1930, 1931 and 1932 are on the "Seven Year Plan."

Parcel 46. Conveyed by John Phillip Paul, married, to Amelia L. Paul by a warranty deed dated May 1, 1925 and recorded June 16, 1925 in Liber 2069, Page 557, of Deeds, Wayne County Records, an undivided two-thirds interest in said parcel. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931, in Liber 3613, Page 291, of Deeds, Wayne County Records, the remaining one-third interest. Said parcel as a whole is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $126.79, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $587.07, plus interest. A portion of said parcel is listed as having been conveyed within the two year period.

Parcel 47. Conveyed by John P. Paul and Lena Paul, his wife, to Nettie Paul by a warranty deed dated October 5, 1925, recorded June 4, 1926 in Liber 2343, Page 465, of Deeds, Wayne County Records. Mortgaged by Nettie Paul to the Peninsular State Bank for $5000.00 on July 30, 1929, said mortgage being recorded July 31, 1929 in Liber 2360, Page 435. Mortgages, Wayne County Records. Conveyed by Nettie Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly as tenants by the entireties, and Riney F. Paul and Jessie Paul, his wife, jointly, as tenants by the entireties, by a quit claim deed dated September 27, 1933, recorded September 28, 1933 in Liber 4012, Page 192, of Deeds, Wayne County Records. Said parcel is subject to the claim of the State of Michigan and the claim of the County of Wayne for unpaid taxes for the years 1929 to 1934 inclusive, in the sum of $1405.76, and to the claim of the City of Highland Park for

taxes for the years 1929 to 1935 inclusive; in the sum of $1556.47, plus interest. Said parcel was conveyed within the two year period and included in the return for the Estate of John P. Paul, deceased.

Parcel 48. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly, as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly, as tenants by the entireties, by a quit claim deed dated September 27, 1933 and recorded September 28, 1933 in Liber 4012, Page 186, of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $118.41, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $516.97 plus interest.

Parcel 49. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931, recorded June 20, 1931, in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, and Amelia L. Paul to Frederick B. Paul and Ruby H. Paul, his wife, jointly, as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly, as tenants by the entireties, by a quit claim deed dated September 27, 1933 recorded September 28, 1933 in Liber 4012, Page 186, of

Deeds, Wayne County Records. Subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1934 inclusive, in the sum of $90.40, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $413.12, plus interest.

Parcel 50. Conveyed by the Security Trust Company, Administrator of the Estate of Theodore J. Corns, deceased, to John P. Paul and Lena Paul, his wife, in pursuance of a land contract, on February 15, 1927, said deed being recorded March 1, 1927 in Liber 2557, Page 19 of Deeds, Wayne County Records. Mortgaged by Lena Paul, by Nettie B. Paul, her attorney in fact, to the Security Trust Company, for $2500.00, on October 12, 1926, recorded October 14, 1926 in Liber 1828, Page 429, of Mortgages, Wayne County Records. Conveyed by Lena Paul, widow of John P. Paul, deceased, to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul by a deed dated February 13, 1931 recorded June 20, 1931 in Liber 3613, Page 291, of Deeds, Wayne County Records. Conveyed by John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney F. Paul and Jessie B. Paul, his wife, Amelia L. Paul to Frederick P. Paul and Ruby H. Paul, his wife, jointly, as tenants by the entireties, and Riney F. Paul and Jessie B. Paul, his wife, jointly, as tenants by the entireties, by a quit claim deed dated September 27, 1933 and recorded September 28, 1933 in Liber 4012, Page 186, of Deeds, Wayne County Records. Said parcel is subject to the claims of the State of Michigan and the County of Wayne for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $167.68, and to the claim of the City of Detroit for unpaid taxes for the years 1930 to 1935 inclusive, in the sum of $795.21, plus interest. Said parcel is listed in the return for the Estate of John P. Paul, deceased, as a land contract payable.

XIX

That notwithstanding said conveyances and encumbrances subsequent to May 5, 1926, as hereinbefore described, plaintiff's claim for unpaid estate tax and interest remains in full force and effect as a prior lien against said property.

XX

That plaintiff has no clear, adequate or complete remedy at law against defendants herein, and therefore brings this suit.

WHEREFORE, plaintiff prays:

1. That the Court determine the merits of all claims to and liens upon said real estate; that the interest, lien or claim of the United States be established and enforced as regards said real estate; and that so much of said property as may be necessary to satisfy the tax and interest due to plaintiff as aforesaid, be sold and the proceeds thereof applied in payment of said tax and interest.

2. That plaintiff may have such other and further relief as to the Court may seem meet and proper, as well as a decree for costs.

And may it please the Court to grant unto the plaintiff a writ of subpoena to the United States of America issued out of and under the seal of the Honorable Court, directed to the above-named defendants and commanding them on a date certain and under certain penalties therein expressed, personally to appear before this Court and then and there to answer all and singularly the premises herein, under oath, and to stand to and perform and abide by such orders, directions and decrees as may be made against them in the premises.

GREGORY H. FREDERICK,
United States Attorney,
Attorney for Plaintiff.

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MICHIGAN } SS:

Gregory H. Frederick, being first duly sworn according to law, deposes and says that he is the United States Attorney in and for the Eastern District of Michigan, and is authorized to make this affidavit on behalf of the plaintiff herein; that he makes this affidavit on its behalf, and that upon information and belief the facts set forth in said bill of complaint he believes to be true.

GREGORY H. FREDERICK,

Subscribed and sworn to before me this 4th day of May, 1936.

MILDRED G. CLOONAN,
Notary Public, Wayne County, Mich.
My Commission Expires June 26, 1936.

APPEARANCE OF THE DETROIT BANK

(Filed May 15, 1936)

To the Clerk of Said Court:

Please enter the appearance of The Detroit Bank (formerly The Detroit Savings Bank), a Michigan Banking Corporation, and of Ernest H. King, Receiver in that certain cause listed as No. 241,203, in Chancery, in the Circuit Court for the County of Wayne, by us as their attorneys.

MILLER, CANFIELD, PADDOCK AND STONE,
Attorneys for defendants, The Detroit Bank and Ernest H. King, Receiver.

Dated at Detroit, Michigan,
this 15th day of May, 1936.

To: GREGORY H. FREDERICK,
United States Attorney,
Federal Building,
Detroit, Michigan,
Attorney for Plaintiff.

Sir:

YOU WILL PLEASE TAKE NOTICE That we have this day caused to be entered the appearance of defendants, The Detroit Bank (formerly known as The Detroit Savings Bank), a Michigan Banking Corporation, and Ernest H. King, Receiver in that certain cause listed as No. 241,203, in Chancery, in the Circuit Court for the County of Wayne, by us as their attorneys.

MILLER, CANFIELD, PADDOCK AND STONE,
Attorneys for defendants, The Detroit Bank and Ernest H. King, Receiver.

Dated at Detroit, Michigan,
this 15th day of May, 1936.

ANSWER OF DEFENDANT, THE DETROIT BANK

(Filed May 20, 1936)

Now comes the defendant, The Detroit Bank, and for answer to plaintiff's Bill of Complaint, says:

(1) This defendant admits the allegations contained in Paragraph 1 of plaintiff's Bill of Complaint.

(2) In answer to Paragraph 2 of Plaintiff's Bill of Complaint, this defendant admits that it was, and now is, a corporation duly organized under and by virtue of the laws of the State of Michigan, having its principal place of business in the City of Detroit, State of Michigan, and in the Eastern Judicial District of Michigan, Southern Division. This defendant also admits the jurisdictional allegations regarding the State of Michigan, County of Wayne, and City of Detroit; and also admits jurisdictional allegations regarding the Auditor General of Michigan, the Treasurer of the City of Detroit, and the Treasurer of the County of Wayne; and also admits the jurisdictional allegations regarding the City of Highland Park. As to the other allegations contained in Paragraph 2 of Plaintiff's Bill of Complaint, this defendant having no knowledge thereof neither admits nor denies the same but leaves the plaintiff to its proofs thereof.

(3) This defendant admits the allegations contained in Paragraph 3 of Plaintiff's Bill of Complaint.

(4) This defendant neither admits nor denies the allegations contained in Paragraph 4 of Plaintiff's Bill of Complaint, having no knowledge with regard thereto.

(5) This defendant admits the allegations contained in Paragraph 5 of Plaintiff's Bill of Complaint.

(6) This defendant admits the allegations contained in Paragraph 6 of Plaintiff's Bill of Complaint.

(7) This defendant admits the allegations contained in Paragraph 7 of Plaintiff's Bill of Complaint.

(8) Answering the allegations contained in Paragraph 8 of Plaintiff's Bill of Complaint, this defendant has no knowledge with respect thereto, and hence neither admits nor denies the same but leaves plaintiff to its proofs thereof.

(9) Answering the allegations contained in Paragraph 9 of Plaintiff's Bill of Complaint, this defendant has no knowledge with respect thereto, and hence neither admits nor denies the same but leaves plaintiff to its proofs thereof.

(10) Answering the allegations contained in Paragraph 10 of Plaintiff's Bill of Complaint, this defendant has no knowledge with respect therto, and hence neither admits nor denies the same but leaves plaintiff to its proofs thereof.

(11) Answering the allegations contained in Paragraph 11 of Plaintiff's Bill of Complaint, this defendant has no knowledge with respect thereto, and hence neither admits nor denies the same but leaves plaintiff to its proofs thereof.

(12) This defendant answering the allegations contained in Paragraph 12 of Plaintiff's Bill of Complaint, has no knowledge with respect thereto, and hence neither admits nor denies the same but leaves plaintiff to its proofs thereof.

(13) This defendant answering the allegations contained in Paragraph 13 of Plaintiff's Bill of Complaint, admits that interest would accrue at the rates specified if the deficiency existed as alleged.

(14) This defendant answering the allegations contained in Paragraph 14 of Plaintiff's Bill of Complaint, has no knowledge with respect thereto, and hence neither admits nor denies the same but leaves plaintiff to its proofs thereof.

(15) This defendant answering Paragraph 15 of Plaintiff's Bill of Complaint denies that any notice and demand was ever served upon it, and as to service upon the other parties in this suit, this defendant has no knowledge and hence neither admits nor denies the same but leaves plaintiff to its proofs thereof.

(16) This defendant answering Paragraph 16 of Plaintiff's Bill of Complaint, has no knowledge with respect thereto and hence neither admits nor denies the same but leaves the plaintiff to its proofs thereof.

(17) This defendant answering Paragraph 17 of Plaintiff's Bill of Complaint admits that the sections of the several acts referred to deal with the subject of the estate tax lien. This defendant denies, however, that any lien valid against this defendant attached on May 5, 1926, or at any time subsequent thereto prior to the date that the notice of lien was filed of record, if such filing of record occurred, as to which this defendant has no knowledge and hence leaves the plaintiff to its proofs thereof.

This defendant asserts that if any lien at all exists against the properties in the gross estate of the said John P. Paul, Deceased, such lien is not valid with respect to any properties upon which this defendant has an encumbrance made prior to the date of record of notice of the lien. This defendant's interest in the several properties will be more fully set forth within this Answer.

This defendant further asserts that the provisions of the several revenue acts set forth in the Bill of Complaint creating the estate tax lien are subject to the general lien statute, to-wit—the Revised Statutes of the United States, Section 3186, as amended by Section 613 of the Revenue Act of 1928, and under the terms thereof this defendant asserts that Section 3186 of the Revised Statutes provides for the arising of the lien when the assessment list is received by the Collector, and this defendant alleges that in the instant case the assessment list was not received by the Collector until February 19, 1933, long subsequent to the date of the making of the encumbrances to this defendant, and that therefore the lien of this defendant attached on the properties in question prior to the lien of the United States.

Furthermore this defendant asserts that the lien here asserted by the plaintiff is subject to notice under the provisions of Section 3186 of the Revised Statutes, as amended, which provides that the lien shall not be valid against any mortgagee until notice thereof has been filed by the Collector in accordance with the laws of the state in which the property subject to the lien is situated, whenever the state or territory has by law provided for filing of such notice, and the State of Michigan has provided for the filing of such notice, Act No. 104 of the Public Act of Michigan of 1923, and this defendant asserts that since plaintiff does not even claim that the notice was filed with the Register of Deeds prior to December 26, 1935, which is long subsequent to the date of the making of the several encumbrances to this defendant, therefore the lien of this defendant is superior to that of the plaintiff in each and every instance.

This defendant further alleges that if Section 315 of the Revenue Act of 1926, as amended, establishing an estate tax lien, may be construed to impose a lien on the gross estate valid as against encumbrances made prior to the making of the assessment and prior to the filing of the lien such construction results in making the statute in question violative of the Fifth Amendment to the Constitution of the United States of America in that it deprives this defendant of its property without due process of law.

This defendant further asserts that if so construed, Section 315 of the Revenue Act of 1926, as amended, violates Amendment No. 10 of the Constitution of the United States of America in that the power to create interests in land is peculiarly within the province of the states and is, therefore, a power not delegated to the United States, nor prohibited to the states, and hence is reserved to the states or to the people thereof within the meaning of Article 10 of Amendments to the Constitution of the United States; that the system of land law of the State of Michigan provides for the recording of all

instruments and notices of interest in lands in order to make said interests good against bona fide purchasers and encumbrancers, to wit: Section 13304-9 of the Compiled Laws of Michigan of 1929: This defendant further asserts that it is a bona fide encumbrancer of all the parcels of land upon which it has a mortgage, having loaned money on the security of the same without notice, actual or constructive, of any claim of lien of the United States of America.

(18) This defendant answering Paragraph 18 of Plaintiff's Bill of Complaint says that it has an interest as mortgagee in certain of the parcels set forth in said Paragraph 18, as follows:

Parcels 1-2-4-7-8-9-10-11-20-31-32 and 38.

This defendant, however, denies that any of said parcels in which it is interested is subject to plaintiff's claimed lien for the reasons above stated.

Further answering said Paragraph 18, this defendant has no knowledge with respect to the remaining parcels mentioned in said paragraph.

Further answering said Paragraph 18, this defendant says that it has no knowledge as to whether or not any of said parcels are includable in the gross estate of John P. Paul, deceased.

(19) This defendant, answering the allegations contained in Paragraph 19 of Plaintiff's Bill of Complaint, has no knowledge with respect to the same and hence neither admits nor denies the same but leaves the plaintiff to its proofs thereof.

(20) Answering Paragraph 20 of Plaintiff's Bill of Complant, this defendant asserts that it is the encumbrancer of certain of said parcels, as follows:

Parcel No. 1: This defendant asserts that the mortgage on this parcel was made by Lena Paul as survivor of herself and her deceased husband, John P. Paul; that is, as surviving tenant by the entirety; also that Chancery Cause No. 241,203 is entitled—"John W. Paul and Nettie Paul, Plaintiffs, versus

The Detroit Savings Bank, now The Detroit Bank, a Michigan banking corporation; and Harold E. Stoll, Register of Deeds for Wayne County, Michigan, Defendants."

Parcel No. 2: This defendant admits the allegations with respect to Parcel No. 2. This defendant asserts that the mortgage on this parcel was made by Lena Paul, as survivor of herself and her deceased husband, John P. Paul; that is—as surviving tenant by the entirety.

Parcel No. 4: This defendant admits the allegations with respect to Parcel No. 4. This defendant denies, however, that said parcel was ever part of the Estate of John P. Paul, but was owned by his wife, Lena Paul, in her individual capacity and not as surviving tenant by the entirety, and was not acquired from the Estate of John P. Paul. This defendant, therefore, asserts that plaintiff could not possibly have a lien against this parcel. In addition, plaintiff asserts that the estate tax lien created by Section 315 of the Revenue Act of 1926, as amended, grants a lien only upon the gross estate of the decedent, and in case liability of a transferee is asserted, the lien attaches only to the property transferred, and that this parcel was never part of the gross estate and therefore is not subject to the lien for Lena Paul's liability, if any, as transferee.

Parcel No. 7: Plaintiff has omitted Parcel No. 7 from the list of properties conveyed and encumbered. However, Parcel No. 7 is subject to a mortgage to this defendant made October 8, 1927, recorded November 7, 1927, in Liber 2041 of Mortgages on page 316, and is in the sum of $15,000.00, which mortgage has been foreclosed, sheriff's deed granted May 18, 1934, and is subject to the receivership in Chancery, Cause No. 241,203, Wayne County Circuit Court, Ernest H. King, Receiver. This mortgage was made by Lena Paul as surviving tenant by the entirety.

Parcel No. 8: This defendant admits the allegations with respect to Parcel No. 8. This mortgage was made by the heirs

of John P. Paul, and was originally included in the Estate of John P. Paul, deceased.

Parcel No. 9: This defendant admits the allegations with respect to Parcel No. 9. This mortgage was made on September 22, 1924, prior to the date of death of John P. Paul, and hence is necessarily superior in lien to any claim of the United States since the lien of this defendant's mortgage was in existence at the earliest moment that plaintiff claims its lien arose.

Parcel No. 10: This defendant admits the allegations with respect to Parcel No. 10. This defendant asserts that the mortgage on this parcel was made by Lena Paul, as survivor of herself and her deceased husband, John P. Paul; that is—as surviving tenant by the entirety.

Parcel No. 11: This defendant admits the allegations with respect to Parcel No. 11. This defendant asserts that the mortgage on this parcel was made by Lena Paul, as survivor of herself and her deceased husband, John P. Paul; that is—as surviving tenant by the entirety.

Parcel No. 20: This defendant admits the allegations with respect to Parcel No. 20. This mortgage was made April 24, 1920, by Barnet Poliat and Jane, his wife, and Abraham Lott and Bessie, his wife, and was later assumed by John P. Paul and Lena, his wife, and that therefore plaintiff's lien must be inferior to the lien of this defendant since the lien of this defendant was in existence at the earliest moment that plaintiff claims its lien came into existence. With respect to this parcel, this defendant further asserts that it is included in cause No. 241,203, in the Wayne Circuit Court, in Chancery, and is under the control of Ernest H. King, Receiver.

Parcel No. 31: This defendant admits the allegations with respect to Parcel No. 31. This defendant asserts that the mortgage on this parcel was made by Lena Paul, as survivor of herself and her deceased husband, John P. Paul; that is—as surviving tenant by the entirety.

Parcel No. 32: This defendant admits the allegations with respect to Parcel No. 32. This defendant asserts that the mortgage on this parcel was made by Lena Paul, as survivor of herself and her deceased husband, John P. Paul; that is—as surviving tenant by the entirety.

Parcel No. 38: This defendant admits the allegations with respect to Parcel No. 38. This defendant asserts that the mortgage on this parcel was made by Lena Paul, as survivor of herself and her deceased husband, John P. Paul; that is—as surviving tenant by the entirety.

Further answering said Paragraph 20, this defendant asserts that it has no knowledge with respect to the subsequent conveyances of the parcels in which it is interested, subsequent to the making of its mortgages; that some of the taxes plaintiff schedules as unpaid were paid by this defendant; that otherwise it has no knowledge with respect to the correctness of the amount of unpaid taxes, and therefore neither admits nor denies said allegations but leaves the plaintiff to its proofs thereof. This defendant asserts that some of the descriptions in the Bill of Complaint do not correspond with those contained in this defendant's mortgages, but this defendant does not believe the variances are material.

Further answering said Paragraph 20, this defendant asserts that with respect to Parcels 1-2-7-10-11-31-32 and 38, in addition to the foregoing reasons why there is no lien superior to the lien of this defendant, there is an additional reason, to-wit: That Section 315 of the Revenue Act of 1926, as amended, creates a lien only upon property included in the gross estate in which title was vested in the decedent at the time of his death, in that Section 315(b) creates a lien on property which is part of a gross estate and to which the decedent did not have title at the time of his death, such transfers being those in contemplation of death, or to take effect at or after death, or in case of insurance; and the acquisition of title by Lena Paul, the surviving tenant by entirety, is not in-

cluded within the transfers with respect to which a lien is imposed on property in the hands of a transferee; and the fact that Congress deemed it essential to specifically impose a lien on property in the hands of the transferee in certain cases where the property is included in the gross estate but the decedent did not have title at the time of his death, makes it clear that no such lien is imposed in cases where title was not in the decedent at the time of his death, and Congress failed to make specific provisions for the lien on the property in the hands of the transferee, acquisition as a surviving tenant by entirety being such a case of failure to make specific provisions.

With respect to the remaining parcels in Paragraph 20 of Plaintiff's Bill of Complaint, this defendant has no knowledge, and therefore neither admits nor denies the same but leaves plaintiff to its proofs thereof.

(21) This defendant further asserts that it has paid taxes upon the mortgaged premises as follows:

Parcel No.	*Amount*
1	$12,992.85
2	3,204.79
4	3,404.95
7	572.21
8	4,235.58
9	29,909.54
10	2,212.97
11	1,370.26
20	916.59
31	1,474.91
32	930.87
38	1,392.45
TOTAL	$62,617.97

(22) This defendant asserts that the amounts advanced by it for the payment of taxes were in discharge of prior liens on the premises prior in right to the lien of the United States, if any may have arisen, and that therefore if it should be decreed that the United States had a lien prior in right to that of this defendant with respect to any or all of the parcels in which this defendant is interested, that nevertheless this defendant be decreed to have a prior lien to that of the plaintiff with respect to the amounts advanced for the payment of taxes for the parcels set forth in this paragraph respectively.

(23) This defendant asserts that the amounts due and unpaid to it with respect to the several parcels are as follows:

Parcel No.	*Date*	*Principal*	*Interest*
1	7/1/36	$32,346.65	$ 7,012.03
2	8/1/36	14,974.75	3,716.50
4	10/1/36	18,688.15	4,673.99
7	10/1/36	13,374.73	3,651.08
8	6/1/36	32,583.88	8,178.59
9	9/1/36	48,032.49	9,773.36
10	10/1/36	23,763.67	6,330.44
11	8/1/36	17,905.16	4,626.36
20	10/1/36	1,782.79	297.27
31	7/1/36	12,553.11	3,084.94
32	7/1/36	8,357.57	2,122.32
38	7/1/36	11,675.78	2,866.93

This defendant further asserts that, while it has obtained sheriff's deeds with respect to each of the parcels in which it is interested, all the parcels are involved in Chancery suit No. 241,203 aforesaid, under the control of the aforesaid receiver, said proceedings having been brought under the Michigan Moratorium Act, and therefore this defendant's inchoate title has not ripened into full title because of the pendency of said moratorium proceedings.

WHEREFORE, this defendant prays:

1. That this Court determine that the lien of this defendant

with respect to parcels 1-2-4-7-8-9-10-11-20-31-32 and 38, as set forth in the Bill of Complaint and in this answer, is prior in time and right to the interest, lien or claim of the United States, and that any sale of property to satisfy taxes or interest that may be ordered by this Court shall be decreed to be subject to the lien of this defendant on the parcels aforesaid upon which this defendant has an encumbrance.

2. This defendant further prays that it may be decreed to have a prior lien in the amounts set forth in Paragraph (23) of this Answer.

3. This defendant further prays that it may be decreed to have a prior lien with respect to the taxes paid by it, as set forth in Paragraph (21) of its Answer, even if it be decreed that the lien of the United States is prior to the lien of this defendant with respect to any or all of the parcels in which this defendant is interested, and that the aforesaid taxes be added to the amount decreed to be due to this defendant with respect to its several mortgages.

4. This defendant further prays that the assertion of lien by the plaintiff constitutes a cloud on the title of this defendant and that, with respect to each and every parcel of land in which this defendant is interested, as aforesaid, pursuant to the Act of March 4, 1931, 46 Stat. 1528, and pursuant to Section 3207 of the Revised Statutes of the United States, the Court shall adjudge the merits of all claims and liens upon the real estate in question, and if a sale is decreed, it shall adjudge a distribution of the proceeds thereof—first to this defendant with respect to the parcels upon which this defendant has a lien, or a sale subject to the lien of this defendant.

5. This defendant further prays that it may have such other and additional relief as is agreeable to equity and good conscience.

And this defendant will ever pray, etc.

THE DETROIT BANK

By R. ROMER, *Vice-President.*

MILLER, CANFIELD, PADDOCK & STONE,
Attorneys for Defendant, The Detroit Bank,
3456 Penobscot Building, Detroit, Michigan.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.

Before me, a Notary Public in and for said County, appeared R. Romer, to me personally known, who being duly sworn did say that he is the Vice-President of The Detroit Bank, a Michigan banking corporation, and that he has read the foregoing answer executed by him in behalf of said The Detroit Bank, and that he knows the contents thereof and that the same are true; and that he was duly authorized to execute the same on behalf of said The Detroit Bank.

W. F. MULLEN,
Notary Public,
Wayne County, Michigan.

My commission expires: January 18, 1938.

APPEARANCE OF DEFENDANTS CITY OF DETROIT, A Municipal Corporation and ALBERT E. COBO, Treasurer of the City of Detroit

(Filed May 28, 1936)

To the Clerk of Said Court:

Please enter the appearances of the City of Detroit, a Municipal Corporation, and Albert E. Cobo, Treasurer of the City of Detroit, defendants, by the undersigned, their attorneys.

RAYMOND J. KELLY,
Corporation Counsel, and

JOHN H. WITHERSPOON,
Assistant Corporation Counsel
Attorneys for said Defendants

Business Address: 301 City Hall,
Detroit, Michigan
Phone: Cherry 9640.

Dated: Detroit, Michigan
May 27, 1936.

To: GREGORY H. FREDERICK,
United States Attorney for
the Eastern District of Michigan,
Attorney for Plaintiff,

Federal Building,
Detroit, Michigan.

Sir:

Please take notice that the appearances of the City of Detroit, a Municipal Corporation, and Albert E. Cobo,

Treasurer of the City of Detroit, defendants, have been entered herein by the undersigned, their attorneys.

RAYMOND J. KELLY,
Corporation Counsel, and
JOHN H. WITHERSPOON,
Assistant Corporation Counsel
Attorneys for said Defendants
Business Address: 301 City Hall
Detroit, Michigan
Phone: Cherry 9640.

ANSWER OF DEFENDANTS CITY OF DETROIT, A Municipal Corporation, and ALBERT E. COBO, Treasurer of the City of Detroit.

(Filed May 28, 1936)

These defendants now and at all times hereafter saving and reserving unto themselves all manner of exception to the many errors and insufficiencies of plaintiff's bill of complaint, for answer thereunto and for such parts thereof as these defendants are advised it is material or necessary for them to make answer thereto, answering say:

I.

Answering paragraph one, these defendants admit the allegations therein contained.

II.

Answering paragraph two, these defendants admit that the City of Detroit is a municipal corporation of the State of Michigan, and that Albert E. Cobo is Treasurer of the City of Detroit, a citizen of the United States and of the State of Michigan, residing in the City of Detroit, and that both the City of Detroit, a municipal corporation, and Albert E. Cobo are within the Eastern Judicial District of Michigan, Southern Division thereof.

Further answering said paragraph, these defendants admit that they have an interest in the nature of unpaid taxes and assessment liens and City bids for delinquent taxes upon some of the parcels of property described in the bill of complaint.

Further answering said paragraph, these defendants neither admit nor deny the remaining allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

III.

Answering paragraph three, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

IV.

Answering paragraph four, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

V.

Answering paragraph five, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

VI.

Answering paragraph six, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

VII.

Answering paragraph seven, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

VIII.

Answering paragraph eight, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

IX.

Answering paragraph nine, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

X.

Answering paragraph ten, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

XI.

Answering paragraph eleven, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

XII.

Answering paragraph twelve, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

XIII.

Answering paragraph thirteen, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

XIV.

Answering paragraph fourteen, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

XV.

Answering paragraph fifteen, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

XVI.

Answering paragraph sixteen, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

XVII.

Answering paragraph seventeen, these defendants neither admit nor deny that a lien in favor of the plaintiff attached to the property described in the bill of complaint but aver the fact to be that if said lien did attach that the same is subordinate and inferior to the lien and tax and assessment interest of the City of Detroit for the unpaid taxes and assessments levied upon said property by said City of Detroit.

XVIII.

Answering paragraph eighteen, these defendants neither admit nor deny that a lien for Federal Estate tax and interest attached to the property therein described, but aver that if said lien did attach that the same is subordinate to the unpaid tax and assessment liens and interest of the City of Detroit in said property as hereinbefore set forth.

XIX.

Answering paragraph nineteen, these defendants neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

XX.

These defendants answering paragraph twenty, Parcel 1, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit, for unpaid taxes and assessments, but deny that the amount of the same is $1,396.37 and aver the fact to be the amount of the same is $2,170.33 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 1, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 2, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $2,145.86 and aver the fact to be the amount of the same is $1,233.36 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 2, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 2a, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1,466.29 and aver the fact to be the amount of the same is $1,268.78 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this

date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 2a, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 3, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1,353.89 and aver the fact to be the amount of the same is $1,181.46 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 3, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 4, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1,513.69 and aver the fact to be the amount of the same is $1,122.26 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 4 these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 5, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid

taxes and assessments, but deny that the amount of the same is $2,723.27 and aver the fact to be the amount of the same is $2,197.86 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 5 these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 6, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1,180.84 and aver the fact to be the amount of the same is $1,011.78 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 6 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 7, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments and aver the fact to be the amount of the same is $958.57 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 7 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 8, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $3,989.88 and aver the fact to be the amount of the same is $18,843.80 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 8 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 9, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $5,711.71 and aver the fact to be the amount of the same is $5,354.32 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 9 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 10, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $909.01 and aver the fact to be the amount of the same is $852.71 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The re-

maining allegations therein contained with reference to Parcel 10 these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 11, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $712.01 and aver the fact to be the amount of the same is $668.80 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 11 these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 12, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $913.84 and aver the fact to be the amount of the same is $810.30 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 12 these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 13, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $528.81 and aver the fact to be the amount of the same is

$548.91 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 13 these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 14, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $781.47 and aver the fact to be the amount of the same is $682.65 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 14 these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 15, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $464.78 and aver the fact to be the amount of the same is $405.25 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 15 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 16, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $822.30 and aver the fact to be the amount of the same is $709.77 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 16 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 17, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $348.39 and aver the fact to be the amount of the same is $303.33 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 17 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 18, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1326.21 and aver the fact to be the amount of the same is $1155.34 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The

remaining allegations therein contained with reference to Parcel 18 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 19, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1313.87 and aver the fact to be the amount of the same is $1147.00 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 19 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 20, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $359.40 and aver the fact to be the amount of the same is $336.63 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 20 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 21, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same

is $1550.97 and aver the fact to be the amount of the same is $1438.23 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 21 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 22, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $637.74 and aver the fact to be the amount of the same is $2819.93 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 22 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 23, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1253.72 and aver the fact to be the amount of the same is $1101.01 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 23 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 24, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $287.27 and aver the fact to be the amount of the same is $249.62 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein with reference to Parcel 24 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 25, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $497.47 and aver the fact to be the amount of the same is $465.97 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein with reference to Parcel 25 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 26, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $448.95 and aver the fact to be the amount of the same is $381.15 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The

remaining allegations therein contained with reference to Parcel 26 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 27, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $312.19 and aver the fact to be the amount of the same is $264.18 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 27 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 28, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $250.72 and aver the fact to be the amount of the same is $251.99 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 28 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 29, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1054.36 and aver the fact to be the amount of the same is

$799.59 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 29 these defendants neither admit nor deny, not having sufficient information upon which to base an answer and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 30, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $528.83 and aver the fact to be the amount of the same is $453.41 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 30, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 31, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $363.12 and aver the fact to be the amount of the same is $384.44 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 31, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 32, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $322.42 and aver the fact to be the amount of the same is $180.33 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 32, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 33, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $2,601.34 and aver the fact to be the amount of the same is $2,266.62 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 33, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 34, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1,330.99 and aver the fact to be the amount of the same is $1,180.55 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The re-

maining allegations therein contained with reference to Parcel 34, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 35, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $687.82 and aver the fact to be the amount of the same is $646.09 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 35, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 36, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $579.13 and aver the fact to be the amount of the same is $502.02 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 36, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 37, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $623.88 and aver the fact to be the amount of the same is

$522.66 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 37, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 38, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $531.40 and aver the fact to be the amount of the same is $315.20 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 38, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 39, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1,014.26 and aver the fact to be the amount of the same is $843.56 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date, which in accordance with the charter of the City of Detroit, must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 39, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcels 40 and 41, admit that upon said parcels there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $1,391.71 and aver the fact to be the amount of the same is $1,211.87 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcels 40 and 41, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 42, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $747.23 and aver the fact to be the amount of the same is $694.37 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date, which in accordance with the charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 42, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 43, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $325.13 and aver the fact to be the amount of the same is $283.27 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date, which in accordance with the charter of the City of Detroit, must be added thereto to the date of payment. The re-

maining allegations therein contained with reference to Parcel 43, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 44, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $738.42 and aver the fact to be the amount of the same is $645.29 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date, which in accordance with the charter of the City of Detroit, must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 44, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 45, admit that upon said parcel there are unpaid tax and assessment liens, and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $423.24 and aver the fact to be the amount of the same is $456.93 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date, which in accordance with the charter of the City of Detroit, must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 45, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

These defendants answering paragraph twenty, Parcel 46, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $587.07 and aver the fact to be the amount of the same is

$480.11 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 46 these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 47, neither admit nor deny the allegations therein contained, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 48, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $516.97 and aver the fact to be the amount of the same is $532.38 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 48, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 49, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $413.12 and aver the fact to be the amount of the same is $344.08 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Par-

cel 49, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

These defendants answering paragraph twenty, Parcel 50, admit that upon said parcel there are unpaid tax and assessment liens and City bids of the City of Detroit for unpaid taxes and assessments, but deny that the amount of the same is $795.21 and aver the fact to be the amount of the same is $602.82 which includes interest and penalty to the date of the City bid but does not include interest and penalty to this date which in accordance with the Charter of the City of Detroit must be added thereto to the date of payment. The remaining allegations therein contained with reference to Parcel 50, these defendants neither admit nor deny, not having sufficient information upon which to base an answer, and therefore leave the plaintiff to its proof thereof.

XXI.

Answering paragraph twenty-one, on page 36 of the bill of complaint, designated as paragraph XIX, apparently should properly be paragraph XXI, these defendants deny the allegations therein contained, and aver the fact to be that the taxes and assessments levied by the City of Detroit upon the property described in the bill of complaint constitute first liens upon said property, in the same class with the taxes and assessments levied by the other units of Government within the State of Michigan, and prior, superior and paramount to any other claim upon said property whatsoever.

XXII.

Answering paragraph twenty-two, on page 36 of the bill of complaint, designated as paragraph XX, apparently should properly be paragraph XXII, these defendants neither admit nor deny the allegations therein contained, not having suffi-

cient information upon which to base an answer, therefore leave the plaintiff to its proofs thereof.

PRAYER FOR RELIEF

These defendants join in plaintiff's prayer that the Court determine the order and priority of liens upon said real estate, and deny that plaintiff is entitled to have its tax lien declared superior and request that this court declare the unpaid tax and assessment liens, and the City bids of the City of Detroit, first liens, and superior and paramount to the claim of the plaintiff for its inheritance taxes.

CITY OF DETROIT,
A Municipal Corporation.

By RAYMOND J. KELLY;
Corporation Counsel

And JOHN H. WITHERSPOON,
Asst. Corporation Counsel

CHARLES N. WILLIAMS,
Acting City Treasurer

Dated: Detroit, Michigan
May 27, 1936

Business Address:
301 City Hall
Detroit, Michigan
Phone: Cherry 9640.

STATE OF MICHIGAN
COUNTY OF WAYNE

SS:

JOHN H. WITHERSPOON, being duly sworn, deposes and says that he is an Assistant Corporation Counsel of the City of Detroit, Michigan, and as such is attorney for the

defendants, the City of Detroit, a municipal corporation, and that he is authorized to sign the names of the said defendant to the foregoing answer; that he has read the answer so subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated upon information and belief and as to those matters he believes the same to be true.

JOHN H. WITHERSPOON

Subscribed and sworn to before me
this 27th day of May, A.D. 1936.

GORDON N. MCKEE,
Notary Public, Wayne County, Mich.
My commission expires Feb. 1, 1938.

STATE OF MICHIGAN
COUNTY OF WAYNE
SS:

CHARLES N. WILLIAMS, being duly sworn, deposes and says that he is Acting City Treasurer in the absence of Albert E. Cobo, City Treasurer, and as such is authorized to sign in the stead of the said defendant Albert E. Cobo, City Treasurer, the foregoing answer; that he has read the answer so subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated upon information and belief, and as to those matters he believes the same to be true.

CHARLES N. WILLIAMS

Subscribed and sworn to before me
this 27th day of May, A.D. 1936.

LUCILLE KLEIN,
Notary Public, Wayne County, Mich.
My commission expires Aug. 29, 1939.

ANSWER OF STATE OF MICHIGAN AND JOHN J. O'HARA, AUDITOR GENERAL FOR THE STATE OF MICHIGAN

(Filed June 2, 1936)

Now comes the State of Michigan and John J. O'Hara, Auditor General for the State of Michigan, by David H. Crowley, Attorney General, and T. Carl Holbrook, Assistant Attorney General, reserving unto themselves the right to more fully reply to the contentions and allegations set forth in the bill of complaint filed in this cause and for general answer to same, say:

I.

For answer to paragraphs 1 to 19, inclusive, of the plaintiff's bill of complaint, these defendants neither admit nor deny the allegations as therein set forth; and leave the plaintiff to its proof to be submitted upon the trial of said cause. The State of Michigan is interested only to the extent as may be shown upon the trial of this cause, and it does by this manner of pleading reserve unto itself any rights and defenses which may be necessary to employ during the progress of the disposition of the above cause.

That upon the termination of the merits of claims to and liens on the real estate as mentioned in said bill of complaint established in favor of the United States, that the interests and liens of the State of Michigan be singly preserved as against each and every description in said bill of complaint set forth.

DAVID H. CROWLEY,
Attorney General,

T. CARL HOLBROOK,
Assistant Attorney General.

Dated: May 28, 1936.

APPEARANCE OF JOHN W. PAUL, FREDERICK P. PAUL, RINEY F. PAUL, NETTIE B. PAUL AND AMELIA L. PAUL

(Filed January 29, 1937)

TO THE CLERK OF SAID COURT:

Please enter the appearance of John W. Paul, Frederick P. Paul, Riney F. Paul, Nettie B. Paul and Amelia L. Paul, defendants in the above entitled cause, by me as their attorney.

CHARLES A. LORENZO,
Attorney for Defendants,
John W. Paul, Frederick P. Paul,
Riney F. Paul, Nettie B. Paul and
Amelia L. Paul.

TO:

JOHN C. LEHR,
U.S. District Attorney,
Detroit, Michigan.

TAKE NOTICE that I have this day caused the appearance to be entered of defendants, John W. Paul, Frederick P. Paul, Riney F. Paul, Nettie B. Paul and Amelia L. Paul, by me as their attorney, and demand is hereby made for a copy of the Declaration and all pleadings in the cause.
Dated January 28th, 1937.

CHARLES A. LORENZO,
Attorney for Defendants,
John W. Paul, Frederick P. Paul,
Riney F. Paul, Nettie B. Paul and
Amelia L. Paul.

Business address:
715-18 Majestic Bldg.,
Detroit, Michigan,
CAdillac 1220.

APPEARANCE OF RUBY H. PAUL

(Filed April 30, 1937)

TO THE CLERK OF SAID COURT:

Please enter the appearance of Ruby H. Paul, defendant in the above entitled cause, by me as her attorney.

CHARLES A. LORENZO,
Attorney for Defendant,
Ruby H. Paul.

TO:

JOHN C. LEHR,
U.S. District Attorney,
Detroit, Michigan.

TAKE NOTICE that I have this day caused the appearance to be entered of defendant, Ruby H. Paul, by me as her attorney, and demand is hereby made for a copy of the Declaration and all pleadings in the cause.
Dated: April 27th, 1937.

CHARLES A. LORENZO,
Attorney for Defendant,
Ruby H. Paul.

Business address:
715-18 Majestic Bldg.,
Detroit, Michigan,
CAdillac 1220.

ANSWER OF JOHN W. PAUL, FREDERICK P. PAUL and RUBY H. PAUL, his wife, NETTIE B. PAUL, RINEY F. PAUL and AMELIA L. PAUL, DEFENDANTS.

(Filed August 31, 1937)

Now come the above named defendants, by their attorney, Charles A. Lorenzo, and, reserving all manner of right to object to the many inconsistencies and defects in the Bill of Complaint contained, and for answer thereto, severally say:

I.

Paragraph I is admitted.

II.

Answering paragraph II of the Bill of Complaint, these defendants admit that they are inhabitants of and reside within the jurisdiction stated and admit they have interests in the premises, but as to all other allegations therein contained, as concerns other persons mentioned, these defendants, for lack of direct knowledge, neither admit nor deny the same and leave plaintiff to its proofs.

III.

Paragraph III is admitted.

IV.

Answering paragraph IV, these defendants, for lack of direct knowledge, neither admit nor deny the same and leave plaintiff to its proofs.

V.

Paragraph V is admitted.

VI.

Paragraph VI is admitted.

VII.

Answering paragraph VII, these defendants say that they are informed and believe and, therefore, charge the fact to be,

that at the time of the death of their ancestor, John P. Paul, he held no property in his own name, but all thereof was entirety property.

VIII.

Answering paragraph VIII, these defendants charge that they are not sufficiently informed of the details therein stated and, therefore, neither admit nor deny the same and leave plaintiff to its proofs.

IX.

Answering paragraph IX of the Bill of Complaint, these defendants, for lack of direct knowledge, neither admit nor deny the same and leave plaintiff to its proofs.

X.

On information and belief, defendants admit paragraph X.

XI.

Answering paragraph XI, these defendants, for lack of direct knowledge, neither admit nor deny the same and leave plaintiff to its proofs, excepting it is their understanding from information that such was done.

XII.

Paragraph XII is admitted on information and belief.

XIII.

Answering paragraph XIII, these defendants, for lack of direct knowledge, neither admit nor deny the same and leave plaintiff to its proofs.

XIV.

Answering paragraph XIV, these defendants, for lack of direct knowledge, neither admit nor deny the same and leave plaintiff to its proofs, excepting that they were informed some time ago by representatives of plaintiff that such a claim was being asserted.

XV.

Answering paragraph XV, these defendants have no recollection of being served as therein stated, but acknowledge that the Detroit Savings Bank some time ago notified some of these defendants of plaintiff's claim.

XVI.

Answering paragraph XVI, these defendants admit that they have not paid plaintiff any moneys on its claim; deny that plaintiff has any valid or legal claim as asserted.

XVII.

Answering paragraph XVII, these defendants deny that a lien in favor of plaintiff existed or attached as therein charged, and deny that plaintiff has any legal or valid claim whatsoever.

XVIII.

Answering paragraph XVIII, these defendants deny that the premises therein described are subject to the lien asserted by plaintiff.

XIX.

Paragraph XIX is admitted.

XX.

Answering paragraph XX, these defendants admit the allegations therein contained as concerns their identification with the various properties described, and that Ernest H. King is acting as Receiver of the parcels designated in Wayne Circuit Court Chancery cause No. 241,203, and as to the other allegations, for lack of direct knowledge thereof, the same are neither admitted nor denied and leave plaintiff to its proofs.

XIX.

Answering paragraph numbered XIX on page 36 of the Bill of Complaint, these defendants deny plaintiff has any valid or legal claim or lien against the properties.

XX.

Answering paragraph numbered XX on page 36 of the Bill of Complaint, these defendants admit that if plaintiff had a valid and legal claim as asserted, that the within proceedings would be proper.

And, for further answer to the matters and things charged in the within Bill of Complaint, these defendants say:

A. That from the time they were in their teens, as well as at and after they reached their majorities, their within named ancestors, John P. Paul and Lena Paul, agreed with them that if they would devote their time and efforts in the handling of the various properties acquired and to be acquired from time to time, that the ownership thereof would in fact belong to all of the surviving members of the family, equally, notwithstanding the titles would be carried and held in the names of their parents, and in doing such it was recognized as being only for convenience in the handling, acquiring and disposing of the properties, and accordingly, these defendants, who are children, devoted their entire time and attention to the handling and looking after of the property acquired by their parents from time to time, without the compensation that ordinarily their parents would have been obliged to pay out, and by the many years of close application and attention to the family business of developing these properties, they materially added to the values and the numbers.

B. In the performance of their part of the program, these defendants made many sacrifices of a social and financial nature, and on the death of their parents, were equitably and otherwise entitled to be considered actual owners and in the nature of bona fide purchasers of any and all properties and assets then existing and, if it be considered that their paternal ancestor was seized of any estate subject to a tax by plaintiff, that, therefore, legally and equitably, the amount thereof should be in recognition of the several rights of these defendants.

C. These defendants further charge that, legally and equitably, the holdings of the titles to the various properties mentioned in the bill of Complaint by the aforementioned ancestors of these defendants was in fact legally and equitably a holding in trust for the benefit of the ancestors and the surviving children, and the conveyances so received by these defendants was in recognition of such trust and in performance of the family agreement aforementioned, whereby at the time of the death of John P. Paul, the father of these defendants, these defendants, with their mother, were the real owners of the parcels and the said conveyances by the maternal ancestor conveyed in fact only her share of the ownership.

D. That after the death of the father of these defendants, they continued to devote their time and attention to the properties and in every manner performed and discharged their duties and obligations with respect thereto in manner done in the past; and that failure of plaintiff to assert a claim, as now attempted, misled them into the feeling that their rights and interest were and would remain intact, and induced them to continue the performance of their services on the feeling of security that no such claim was outstanding or existed and, therefor, the delay of plaintiff in making an assertion as provided by law constitutes laches, attributable to plaintiff, and to be enforced at this late date will result in an unfair, inequitable and unconscionable advantage to plaintiff.

E. If a tax was assertable by plaintiff, the amount thereof was determined and fixed by it with possession of all facts and available records, both public and private, and having made its determination and received payment of the sum demanded, it is guilty of gross laches in failing and neglecting to utilize available knowledge, and its conduct constitutes an election, waiver, release, cancellation and abandonment of further claim as well as gross laches and equitable bar.

F. If plaintiff possessed an enforceable right, as charged in the Bill of Complaint, it has become lost by the lapse of time

and failure to enforce diligently, and is barred by the statutes of limitation.

Defendants pray that Plaintiff's Bill of Complaint be dismissed with costs.

CHARLES A. LORENZO
Attorney for said Defendants,
715-18 Majestic Building,
Detroit, Michigan.

APPEARANCE OF COUNTY OF WAYNE AND JACOB P. SUMERACKI, TREASURER FOR WAYNE COUNTY

(Filed June 27, 1938)

TO THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION, IN EQUITY:

Please enter the appearance of DUNCAN C. McCREA, PROSECUTING ATTORNEY FOR WAYNE COUNTY, and GARFIELD A. NICHOLS, ASSISTANT PROSECUTING ATTORNEY, for and in behalf of the COUNTY OF WAYNE, a public body corporate, and JACOB P. SUMERACKI, Treasurer for Wayne County, two of the defendants in the above entitled cause.

DUNCAN C. McCREA,
Prosecuting Attorney,
By GARFIELD A. NICHOLS,
Assistant Prosecuting Attorney.

508 County Bldg.
Detroit, Michigan.
To: JOHN C. LEHR,
U.S. DISTRICT ATTORNEY:

Please take notice that the undersigned have this day entered their appearance for and in behalf of the COUNTY OF WAYNE, a public body corporate, and JACOB P. SUMERACKI, Treasurer for Wayne County, defendants in the above entitled cause.

DUNCAN C. McCREA,
Prosecuting Attorney,
By GARFIELD A. NICHOLS,
Assistant Prosecuting Attorney.

June 24, 1938

ANSWER OF COUNTY OF WAYNE AND JACOB P. SUMERACKI, TREASURER FOR WAYNE COUNTY

(Filed July 6, 1938)

Now come the COUNTY OF WAYNE, a public body corporate, and JACOB P. SUMERACKI, Treasurer for Wayne County, by DUNCAN C. McCREA, PROSECUTING ATTORNEY FOR WAYNE COUNTY, and Garfield A. Nichols, Assistant Prosecuting Attorney, and for answer to the Bill of Complaint filed in said cause, say as follows:

For answer to paragraphs one to nineteen inclusive of plaintiff's bill of complaint, these defendants neither admit nor deny the allegations as therein set forth, and leave plaintiff to its proof to be submitted upon the trial of said cause.

The County of Wayne, a public body corporate, and Jacob P. Sumeracki, Treasurer for Wayne County, are interested only to the extent as may be shown upon the trial of this cause, and do by this manner of pleading reserve unto themselves any rights and defenses which may be necessary to employ during the progress of the disposition of the above cause.

WHEREFORE these defendants pray that upon the termination of the merits of claims to and liens on the real estate as mentioned in said bill of complaint established in favor of the United States, that the interests and liens of the defendants herein be singly preserved as against each and every description in said bill of complaint set forth.

DUNCAN C. McCREA,
Prosecuting Attorney, Wayne County,

GARFIELD A. NICHOLS,
Assistant Prosecuting Attorney.

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MICHIGAN } SS:

GARFIELD A. NICHOLS, being first duly sworn, deposes and says:

That he is an Assistant Prosecuting Attorney under DUNCAN C. McCREA, PROSECUTING ATTORNEY FOR WAYNE COUNTY, and is authorized to make this affidavit on behalf of the defendants herein; that he makes this affidavit on their behalf, and that upon information and belief the facts set forth in the above answer he believes to be true.

GARFIELD A. NICHOLS.

Sworn to and subscribed before me
this 6th day of July, A.D. 1938.

RUSSELL C. DUNCAN,
Notary Public, Wayne County, Mich.
My commission expires Aug. 31, 1941.

STIPULATION OF FACTS

(Filed July 19, 1938).

It is hereby stipulated and agreed by and between the parties to this cause, by their respective attorneys, that the following facts may be accepted as true to the same extent as if fully developed by the evidence at trial.

1. That this is a civil suit, in equity, seeking the foreclosure of a Federal estate tax lien arising under the laws of the United States, providing for internal revenue and the collection thereof.

2. That the plaintiff is a corporation sovereign and body politic.

3. That at all times hereinafter mentioned John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul, Riney T. Paul and Jessie B. Paul, his wife, Amelia L. Paul, Florence H. Paul, T. Paul Hickey, Howard J. Ely, Guardian of Julia Blanche Hickey, E. B. Finley, Jr., M. E. Bowlus and E. A. Edwards, Liquidating Trustees under Declaration of Trust recorded in Wayne County, in Liber 4166 of Deeds, page 305, Ernest H. King, Receiver in that certain cause listed as No. 241,203 in Chancery, in the Circuit Court for the County of Wayne, and B. C. Schram, Receiver of First National Bank-Detroit, a National Banking Association, were and now are citizens of the United States and of the State of Michigan, and are inhabitants of the Eastern Judi- reside in the City of Detroit, County of Wayne, State of Michigan, and within the jurisdiction of this court; that at all times hereinafter mentioned Mary Emily Wiltsie Field, administratrix of Estate of Charles H. Wiltsie, was and now is a citizen of the United States and an inhabitant of the State of New York, and resides in the City of Rochester, New York; that at all times hereinafter mentioned M. Fuast was and now is a citizen of the United States and an inhabitant of the State of Ohio, and resides in the City of Cleveland,

Ohio; that at all times hereinafter mentioned the Union Guardian Trust Company, a Michigan corporation, the Union Investment Company, a Michigan corporation, and the Detroit Trust Company, a Michigan corporation, are corporations duly organized and existing under and by virtue of the laws of the State of Michigan, having their principal place of business in the City of Detroit, State of Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned the Detroit Bank, formerly the Detroit Savings Bank, a Michigan Banking Corporation, was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, having its principal place of business in the City of Detroit, State of Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned the State of Michigan was and now is a sovereign state; that at all times hereinafter mentioned the County of Wayne was and now is a public Body Corporate, within the State of Michigan and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned the City of Detroit was and now is a Municipal Corporation, within the State of Michigan and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned John J. O'Hara, Auditor General for the State of Michigan, was and now is a citizen of the United States and of the State of Michigan, and resides in the City of Lansing, Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned Albert E. Cobo, Treasurer of the City of Detroit, was and now is a citizen of the United States and of the State of Michigan, and resides in the City of Detroit, Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned Jacob P.

Sumeracki, Treasurer of Wayne County, was and now is a citizen of the United States and of the State of Michigan, and resides in the City of Detroit, Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned the City of Highland Park was and now is a Municipal Corporation within the State of Michigan and within the Eastern Judicial District of Michigan, Southern Division thereof; that at all times hereinafter mentioned Robert Smith, Treasurer of the City of Highland Park, was and now is a citizen of the United States and of the State of Michigan, and resides in the City of Highland Park, Michigan, and within the Eastern Judicial District of Michigan, Southern Division thereof.

4. That this action was instituted by the direction of the Commissioner of Internal Revenue and is authorized and sanctioned by the Attorney General of the United States.

5. That John P. Paul, a resident of the City of Detroit, Wayne County, Michigan, died intestate on May 5, 1926, leaving heirs as follows: Lena Paul, his widow, and John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney T. Paul, Amelia L. Paul and Charles P. Paul, his children.

6. That Lena Paul, widow of said John P. Paul, died intestate on February 18, 1931; that Charles P. Paul died prior to the institution of this suit, leaving no children, and that the defendant Florence H. Paul, his wife and sole heir, was appointed administratrix of the estate of Charles P. Paul by the Probate Court of Wayne County, Michigan, on the 16th day of December, 1931.

7. That on or about July 5, 1927, Lena Paul, describing herself as "'widow of John P. Paul and joint owner with him of all his properties," executed and filed in the office of the Collector of Internal Revenue a Federal estate tax return for the estate of said John P. Paul, deceased, reporting a gross estate of $492,902.00, deductions of $329,823.49, a

net estate of $164,078.51, and a tax liability of $3,450.00, which was duly paid.

8. That the Commissioner of Internal Revenue notified said Lena Paul by letter dated March 14, 1930, addressed to "'Lena Paul, beneficiary, Estate of John P. Paul", of a proposed deficiency in estate tax in the sum of $23,271.84, and advised her of her right to file an appeal with the United States Board of Tax Appeals.

9. That on or about May 10, 1930, an appeal entitled "Appeal of Estate of John P. Paul, Lena Paul, beneficiary, Docket No. 48933" was filed with the United States Board of Tax Appeals.

10. That on November 4, 1932 said United States Board of Tax Appeals entered an order in connection with the appeal of the Estate of John P. Paul, determining that there was an estate tax deficiency due plaintiff in the sum of $23,271.84.

11. That no proceedings were had or appeal taken from said order of the Board of Tax Appeals entered on November 4, 1932, determining the Federal estate tax liability of said estate of John P. Paul, deceased.

12. That in accordance with the applicable provisions of revenue laws of the United States, interest on said deficiency of $23,271.84 due from the Estate of John P. Paul, deceased, accrued at the rate of six per cent (6%) per annum from May 5, 1927 to February 19, 1933; and that said interest on the deficiency to February 19, 1933 amounted to $8,080.28.

13. That on February 19, 1933, the Commissioner of Internal Revenue duly assessed against the Estate of John P. Paul, deceased, said deficiency in the principal amount of $23,271.84 on account of said estate tax liability as finally determined by the United States Board of Tax Appeals, together with interest on said deficiency in the sum of $8,080.28.

14. That no part of said tax deficiency or interest has been paid.

15. That at the time of the death of John P. Paul he, together with his wife, Lena Paul, owned and held legal title to a tenancy by the entirety in all the parcels of real estate described in the bill of complaint, except parcels numbered 2a, 4, 21, 25, 35, 36, and parcels 40 to 47 inclusive, as numbered in the bill of complaint.

16. That at the time of the death of John P. Paul he, together with his wife, Lena Paul, owned and held land contracts covering parcels numbered 2a, 4, 21, 25, 35, and 36, as numbered in the bill of complaint. These parcels were listed as part of the gross estate of John P. Paul in the Federal Estate Tax return filed by Lena Paul. Deeds to each of these parcels, except parcel No. 36, were later delivered by the vendors in the contract to Lena Paul, the widow, or to certain of the children of John P. Paul, in accordance with the terms of the contract.

17. That the land contract covering parcel 36 as numbered in the bill of complaint is now held by the Paul heirs. There remains a balance of $1,900.00 on the purchase price due to Harry E. Barnard, the vendor.

18. That parcels numbered 40 to 47 inclusive, as numbered in the bill of complaint, were conveyed by John P. Paul and Lena Paul, his wife, to certain of their children within two years before the date of the death of John P. Paul. These parcels were treated by the Commissioner of Internal Revenue as part of the gross estate of John P. Paul, as property conveyed in contemplation of death. Said conveyances were made on the dates and in the manner hereinafter described:

Parcels 40, 41, 42, 43, and 44 were conveyed by John P. Paul and Lena Paul, his wife, to Nettie Paul, unmarried, by warranty Deed dated June 22, 1925.

Parcel 45 was conveyed by John P. Paul and Lena Paul, his wife, to Amelia L. Paul, single, by Warranty Deed dated July 10, 1925 and recorded October 20, 1925.

Parcel 46 was conveyed by John P. Paul to Amelia L. Paul by Warranty Deed dated May 1, 1925 and recorded June 16, 1925.

Parcel 47 was conveyed by John P. Paul and Lena Paul, his wife, to Nettie B. Paul by Warranty Deed dated October 5, 1925 and recorded June 4, 1926.

19. On February 13, 1931 Lena Paul, widow of John P. Paul, executed an instrument granting to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul, and Charles P. Paul, children of John P. Paul, all her right, title and interest in any and all real estate standing in her name or in which she had any interest by purchase, inheritance, right of succession or otherwise, located and being in the County of Wayne and State of Michigan (except the homestead property known as 207 King Avenue, Detroit, Michigan). This instrument was recorded on June 20, 1931 in Liber 3613 of Deeds, on page 291, in the office of the Register of Deeds for Wayne County, Michigan. A certified copy of said instrument is attached hereto and marked "Joint Exhibit A". On the same date, February 13, 1931, Lena Paul, widow of John P. Paul, executed a deed conveying the homestead property located at 207 King Avenue, Detroit, Michigan, hereinafter referred to in Parcel 19, as numbered in the Bill of Complaint, to John W. Paul and Nettie B. Paul, present record owners of the property. Said deed was recorded on September 28, 1933 in Liber 4012 of Deeds, on page 173, in the office of the Register of Deeds for Wayne County, Michigan. A certified copy of said instrument is attached hereto and marked "Joint Exhibit B".

20. That by virtue of mesne conveyances between the Paul children, by Quit Claim deeds dated September 27, 1933 and

April 12, 1934, record title to parcels numbered 2a, 3, 5, 6, 8, 12, 14, 15, 16, 17, 21, 22, 23, 24, 26, 27, 28, 29, 30, 32, 33, 34, 35, 37, 39, 42, 43, 44, 45, 47, 48, 49, and 50, as numbered in the bill of complaint, is now held by Frederick H. Paul and Ruby, his wife, as joint tenants.

21. That by virtue of mesne conveyances between the Paul children by Quit Claim deeds dated September 27, 1933, record title to parcels numbered 4, 9, 10, 11, 18, 20, 21 and 38, as numbered in the bill of complaint, is now held by John W. Paul, single, and Nettie B. Paul, unmarried.

22. The parcels of real estate numbered 2a, 3, 5, 6, 12, 13, 14, 15, 16, 17, 21, 22, 24, 25, 26, 27, 28, 30, 33, 37, 39, 45, 46, 48 and 49 in the bill of complaint are not mortgaged or otherwise encumbered, except for Federal, state, county and city taxes as hereinafter stated. The mortgage on parcel number 45, alleged in the bill of complaint to have been made to the Union Investment Company for $3,000.00 on August 18, 1934 and recorded on August 30, 1934 in Liber 2747, at page 609 of Wayne County records, was discharged on March longer has any interest in this property and is subject to no liability for costs or otherwise, to the plaintiff or to the other parties to this cause, arising out of this controversy.

23. The following parcels of real estate, as numbered in the bill of complaint, were mortgaged before the death of John P. Paul, in the amounts and on the dates hereinafter stated.

Parcel 9 was mortgaged to the Detroit Bank for $35,000.00 on September 22, 1924, said mortgage being recorded September 23, 1924 in Liber 1371, page 118, of Mortgages, Wayne County records. This mortgage was foreclosed and sold by Sheriff's deed dated May 18, 1934. It was bid in by the Detroit Bank for $51,298.68. The total amount due at that date, including principal, interest, and advances made by the mortgagee was $51,298.68. Under the Michigan Moratorium Law the equity of redemption under this foreclosure

has been extended to November 1, 1938 and the parcel is now being held and operated by Ernest H. King, receiver. At the time of the sale the principal amount due was $17,446.00. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $29,963.54. The Detroit Bank has received no payments from the receiver.

Parcel 18 was mortgaged on June 8, 1923 to Edward H. Rogers for the sum of $10,000.00, said mortgage being recorded June 9, 1923 in Liber 1210, page 412 of Mortgages, Wayne County records. The principal amount due under this mortgage is $10,000.00, together with interest from July 1, 1932.

Parcel 19 was mortgaged to George S. Hickey for $12,000.00 on March 1, 1920, by a mortgage recorded March 15, 1920 in Liber 970 of Mortgages, page 360, Wayne County records. This mortgage is now owned by T. Paul Hickey and Julia Blanche Hickey by her guardian, Howard J. Ely, heirs at law of George S. Hickey, deceased. The present amount due under said mortgage is $12,000.00, together with unpaid interest of $1,915.00 to July 1, 1938.

Parcel 20 was mortgaged to the Detroit Bank on April 24, 1920, by mortgage recorded May 4, 1920 in Liber 986, page 400 of Mortgages, Wayne County records. The mortgage was foreclosed and sold by Sheriff's deed, dated May 18, 1934, and was bid in by the Detroit Bank for $1,791.74, the total amount due at that time, including principal, interest, and advances made by the mortgagee. Under the Michigan Moratorium Law the equity of redemption under this foreclosure has been extended to November 1, 1938 and the parcel is now being held and operated by Ernest H. King, receiver. At the time of the sale the principal amount due was $810.20. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $916.59. The Detroit Bank has received no payments from the receiver.

Parcel 23 is subject to a mortgage of $6.000.00, made to E. C. Childes of Windsor, Ontario. The present amount due under this mortgage is $6,000.00 principal, together with interest from January 1, 1932.

Parcel 29 was mortgaged to the Detroit Trust Company on November 6, 1907, in the amount of $2,000.00, by mortgage recorded November 7, 1907 in Liber 502, page 204 of Mortgages, Wayne County records. The present amount due under this mortgage is $2,000.00 principal, together with interest from November 1, 1935.

Parcel 24 was mortgaged to the Union Trust Company on December 1, 1923 in the amount of $6,000.00, by mortgage recorded December 4, 1923 in Liber 1305, page 180 of Mortgages, Wayne County records. This mortgage is now held by E. B. Finley, Jr., M. E. Bowlus and E. A. Edwards, liquidating trustees under declaration of trust recorded in Wayne County in Liber 4166 of Deeds, page 305. At present the amount due under this mortgage is $3,962.30, together with interest from May 1, 1938.

Parcel 35 was mortgaged to Peoples Wayne County Bank on April 16, 1925, in the amount of $4,500.00, by mortgage recorded April 17, 1925 in Liber 1478, page 64 of Mortgages, Wayne County records. This mortgage was foreclosed and the property bid in by B. C. Schram, the then holder of the mortgage, and sold by Sheriff's deed dated July 14, 1937. At the time of the sale the total amount due under this mortgage was $2,808.33.

Parcels 40, 41, 42 and 43 were mortgaged to the Detroit Trust Company on July 29, 1903, in the amount of $14,350.00, by mortgage recorded July 31, 1903 in Liber 441, page 345 of Mortgages, Wayne County records. The present amount due under said mortgage is $14,275,65, together with interest from July 1, 1935.

Parcel 44 was mortgaged to the Detroit Trust Company by mortgage dated November 6, 1907, in the amount of

$1,000.00, by mortgage recorded November 7, 1907 in Liber 502, page 202. The present amount due under this mortgage is $1,000.00 principal, together with interest from November 1, 1935.

24. The following parcels of real estate, as numbered in the bill of complaint, are subject to mortgages executed by Lena Paul, widow of John P. Paul and surviving tenant by the entirety, or by the Paul children, after the death of John P. Paul, in the amounts and on the dates hereinafter described. The mortgages made to the Detroit Bank, as hereinafter described, were foreclosed by advertisement and sold at Sheriff's sale on May 18, 1934. The properties were bid in by the Detroit Bank for the total amount of indebtedness then due, including principal, interest and advances made by mortgagee. Upon application of the equity owners the equity of redemption under these foreclosures has been extended, under the Michigan Moratorium Law, to November 1, 1938 and Ernest H. King was appointed receiver of the properties until that date. The receiver has made no payments to the Detroit Bank since his appointment.

Parcel 1 was mortgaged to the Detroit Bank in the Amount of $20,000.00 on July 23, 1930, by mortgage recorded July 25, 1930 in Liber 2506, page 207 of Mortgages, Wayne County records. The total amount bid at the Sheriff's sale was $35,555.79. At the time of sale the principal amount due was $18,935.50. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $13,089.35. The Detroit Bank also advanced $84.00 for insurance.

Parcel 2 was mortgaged to the Detroit Bank on February 8, 1927, in the amount of $18,000.00, by mortgage recorded February 15, 1927 in Liber 1898, page 1 of Mortgages, Wayne County records. The total amount bid at the Sheriff's sale was $16,793.77, the total amount due at that time, including principal, interest, and advances made by the mortgagee. At the time of sale the principal amount due was $11,570.79.

Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $3,204.79. The Detroit Bank also advanced $20.50 for insurance.

Parcel 4 was mortgaged on October 9, 1926 to the Detroit Bank in the amount of $20,000.00, by mortgage recorded in Liber 1927, page 387 of Mortgages, Wayne County records. The total amount bid at the Sheriff's sale was $20,875.23, the total amount due at that time, including principal, interest and advances made by the mortgagee. At the time of the sale the principal amount due was $15,129.20. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $3,404.95. The Detroit Bank also advanced $34.00 for insurance. Legal title to this parcel was never held by John P. Paul, who had only a contract right at the time of his death. Legal title was conveyed to Lena Paul on September 21, 1926.

Parcel 7 was mortgaged to the Detroit Bank on October 8, 1927 in the amount of $15,000.00, by mortgage recorded November 7, 1927 in Liber 2041, page 136 of Mortgages, Wayne County records. The total amount bid at the Sheriff's sale was $15,258.88. At the time of sale the principal amount due was $12,913.45. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $341.28.

Parcel 8 was mortgaged to the Detroit Bank on June 22, 1931 in the amount of $28,000.00, by mortgage recorded June 30, 1931 in Liber 2601, page 272 of Mortgages, Wayne County records. The total amount bid at the Sheriff's sale was $37,288.36. At the time of sale the principal amount due was $28,000.00. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $4,235.58. The Detroit Bank also advanced $198.30 for other items.

Parcel 10 was mortgaged to the Detroit Bank on October 8, 1927 in the amount of $25,000.00 by mortgage recorded October 12, 1927 in Liber 2027, page 356 of Mortgages, Wayne

County records. The total amount bid at the Sheriff's sale was $27,064.61. At the time of sale the principal amount due was $21,405.61. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $2,213.06.

Parcel 11 was mortgaged to the Detroit Bank on August 1, 1929 in the amount of $18,000.00, by mortgage recorded August 5, 1929 in Liber 2363, page 440 of Mortgages, Wayne County records. The total amount bid at the Sheriff's sale was $20,324.05. At the time of sale the principal amount due was $14,436.30. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $3,348.86.

Parcel 31 was mortgaged to the Detroit Bank in the amount of $13,400.00 on July 11, 1928, by mortgage recorded July 16, 1928 in Liber 2171, page 528 of Mortgages, Wayne County records. The total amount bid at the Sheriff's sale was $14,257.34. At the time of sale the principal amount due was $10,842.70. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $1,590.41.

Parcel 32 was mortgaged to the Detroit Bank on July 11, 1928, in the amount of $9,000.00, by mortgage recorded July 16, 1928 in Liber 2171, page 525 of Mortgages, Wayne County records. The total amount bid at the Sheriff's sale was $9,467.99. At the time of sale the principal amount due was $7,317.70. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $944.87.

Parcel 38 was mortgaged to the Detroit Bank on July 16, 1928 in the amount of $12,500.00, by mortgage recorded July 19, 1928 in Liber 2174, page 76 of Mortgages, Wayne County records. The total amount bid at the Sheriff's sale was $13,220.43. At the time of sale the principal amount due was $10,121.70. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $1,434.08.

Parcel 47 was mortgaged to Peninsular State Bank on July 30, 1929, in the amount of $5,000.00, by mortgage recorded July 31, 1929 in Liber 2360, page 435 of Mortgages, Wayne County records. This mortgage was assigned to the First National Bank-Detroit and was foreclosed on March 20, 1936 and bid in by the First National Bank-Detroit for the sum of $4,400.00. There was due at the time, on account of the mortgage, $5,272.97. The Sheriff's deed is now held by B. C. Schram, Receiver of the First National Bank-Detroit.

Parcel 50 was mortgaged to Security Trust Company on October 12, 1926, in the amount of $2,500.00, by mortgage recorded October 14, 1926 in Liber 1828, page 429 of Mortgages, Wayne County records. This mortgage is now in the hands of the Detroit Trust Company and the present amount due thereunder is $1,937.50, together with interest thereon from November 2, 1935.

25. The Estate of John P. Paul was not probated and there are no assets other than the above mentioned parcels of real estate, from which the Federal estate tax in question can be collected.

26. The unpaid state, county and city taxes and assessments assessed against the above mentioned parcels are set forth in schedules attached hereto and marked "Exhibit C".

27. Tax certificates for city taxes for the year 1930 are owned and held by the defendant Mary Emily Wiltsie Field. The face amounts of the outstanding certificates are shown on supplementary stipulation attached hereto and marked "Exhibit D".

Any party hereto may submit evidence at the time of the hearing of this cause not inconsistent with the facts hereinabove stipulated. Any party may object to the materiality of any of the facts hereinabove stipulated.

CHARLES A. LORENZO,
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HENRY and EDWARD WUNSCH,
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ROBERT S. MARX, LAWRENCE I. LEVY, C. WILLARD GITZEN
Attorney for B. C. Schram, Receiver First National Bank, Detroit.

WENDEL BROWN,
Attorney for E. B. Finley, M. E. Bowlus and E. A. Edwards, Liquidating Trustees & Harvey C. Emery, Successor trustee.

BUTZEL, LEVIN & WINSTON,
Attorney for Union Investment Co. as to allegations in P. 22 relating to client.

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By WILLIAM F. CONNOLLY, JR., Asst. Attorney General,
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DUNCAN C. McCREA, Pros. Attorney
By GARFIELD A. NICHOLS, Asst. Pros. Attorney,
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JOHN H. WITHERSPOON,
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EARL B. YOUNG,
City Attorney for City of Highland Park.

JOHN C. LEHR,
Attorney for Plaintiff, United States of America.

WOOD & JACQUEMAIN,
Attorney for Mary Emily Wiltsie Field.

Dated: July 19, 1938.

EXHIBIT C

The following schedules reflect the principal amount of unpaid taxes and assessments assessed against the parcels of real estate described in the bill of complaint, due to the State of Michigan, the County of Wayne, the City of Detroit, and the City of Highland Park.

Except as otherwise indicated below, taxes for the years 1930 to 1935 inclusive, due to the State of Michigan and the County of Wayne, were bid in by the State of Michigan on May 3, 1938. The amount of the bid shown below bears interest at 1% per month until paid. Taxes for the years 1936 and 1937, due to the State of Michigan and the County of Wayne, bear interest at ¾% per month from March 1st of the year following the year, in addition to a 4% flat collection fee imposed after January 1st of the year following the taxable year.

Except as otherwise indicated below, taxes for all years (including 1937) due to the City of Detroit have been bid in by

the City on June 1st of the year following the taxable year. The amount of the City bid as shown below bears interest at the rate of 8% per annum. All unpaid special assessments were bid in by the City of Detroit and the amount of the City bid, as shown below, bears interest at the rate of 10% per annum from the date of the City bid.

Taxes due to the City of Highland Park and the School District of Highland Park are subject to a charge of 1% per month from August 15th to March 1st of the year following the taxable year. On March 1st the unpaid tax, plus accrued charges of 1% per month, are returned to the County Treasurer. Thereafter the composite amount of city and school taxes, together with the charges, bear interest at the same rate as the county and state taxes, as stated above.

The amount of unpaid taxes now due against each parcel, as numbered in the bill of complaint, is as follows:

EXHIBIT C

PARCEL 1

All taxes on this parcel are paid.

PARCEL 2

All Taxes on this parcel are paid.

PARCEL 2a

State and County:

1937	$ 32.21
1936	31.64
1932 to 1935 inc. — State bid	262.66

City of Detroit:

1937—$155.52	1933—$215.28
1936— 159.74	1932— 268.45
1935— 163.42	1931— 440.59
1934— 191.73	

PARCEL 3

State and County:

1937	$ 28.28
1936	26.22
1930 to 1935 inc. — State bid	677.68

City of Detroit:

1937	$136.51	1933	$207.04
1936	132.35	1932	269.96
1935	135.40	1931	400.60
1934	177.32		

PARCEL 4

All taxes on this parcel are paid.

PARCEL 5

State and County:

1937	$ 79.03
1936	73.27
1930 to 1935 inc. — State bid	903.20

City of Detroit:

1937	$381.54	1933	$407.24
1936	369.90	1932	645.19
1935	378.44	1931	574.67
1934	400.05		

CR. from Delinquent 7-yr. plan $269.89

PARCEL 6

State and County:

1937	$ 29.10
1936	26.98
1930 to 1935 inc. — State bid	554.98

City of Detroit:

1937	$140.47	1933	$159.67
1936	136.19	1932	239.80
1935	139.32	1931	320.74
1934	162.36		

PARCEL 7

All taxes on this parcel are paid.

PARCEL 8

State and County:

1937	$193.11
1936	181.54
1934 and 1935 — State bid	513.53

Prior taxes are paid.

City of Detroit:

1937—	$ 932.33	1934—	$1,041.90
1936—	916.43	1933—	1,158.02
1935—	1,003.32		

Special assessment—City Bid 3/31/34 15,706.16

PARCEL 9

All taxes on this parcel are paid.

PARCEL 10

All taxes on this parcel are paid.

PARCEL 11

All taxes on this parcel are paid.

PARCEL 12

State and County:

1937	$ 21.60
1936	20.03
1930 to 1935 inc. — State bid	422.46

City of Detroit:

1937—	$104.29	1933—	$133.15	
1936—	101.11	1932—	196.36	
1935—	112.87	1931—	232.53	
1934—	127.01	1930—	232.72	Wiltsie tax cert.

PARCEL 13

State and County:

1937	$ 18.38
1936	17.04
1935	16.48
*1934 reassessed	18.91
1933	19.00
**1930 to 1932 inc.—10 yr. plan	130.00

City of Detroit:

1937—	$88.71	1933—	$ 90.63
1936—	86.00	1932—	128.80
1935—	88.00	1931—	154.50
1934—	92.74		

PARCEL 14

State and County:

1937	$ 22.81
1936	21.15
*1934 reassessed	23.85
1935)	
1933)	
1932) State Bid	314.54
1931)	
1930)	

City of Detroit:

1937—	$110.10	1933—	$114.28	
1936—	106.74	1932—	161.98	
1935—	109.20	1931—	187.38	
1934—	116.95	1930—	176.86	Wiltsie tax cert.

PARCEL 15

State and County:

1937	$11.21
1936	10.40
1930 to 1935 inc. — State bid	225.91

City of Detroit:

1937—$54.13		1933— $77.60	
1936— 52.48		1932— 96.52	
1935— 59.97		1931— 111.18	
1934— 63.90		1930— 140.29	Wiltsie tax cert.

* 1934 reassessed bears interest ¾% per month from March 1, 1938.

** 10-year plan bears interest 5% per annum from September 1, 1935.

PARCEL 16

State and County:

1937	$17.17
1936	15.92
1930 to 1935 inc. — State bid	400.43

City of Detroit:

1937—$82.91		1933—$132.89	
1936— 80.38		1932— 184.00	
1935— 85.38		1931— 224.44	
1934— 88.65		1930— 239.14	Wiltsie tax cert.

PARCEL 17

State and County:

1937	$ 9.68
1936	8.98
1930 to 1935 inc. — State bid	160.18

City of Detroit:

1937—$46.74		1933—$51.02	
1936— 45.31		1932— 72.39	
1935— 46.35		1931— 88.47	
1934— 48.13		1930— 87.76	Wiltsie tax cert.

PARCEL 18

State and County:

1937	$ 34.24
1936	31.74
1930 to 1935 inc. — State bid	595.82

City of Detroit:

1937	$165.29
1936	160.24
1930 Wiltsie tax cert.	313.61

PARCEL 19

State and County:

1937	$36.70
1936	34.03
1933 to 1935 inc. — State bid	155.63
**1930 to 1932 inc. — 10 yr. plan	240.84

City of Detroit:

1937—	$177.17	1933—	$221.39
1936—	171.77	1932—	271.46
1935—	175.73	1931—	307.43
1934—	182.49	1930—	304.74 Wiltsie tax cert.

** 10-year plan bears interest 5% per annum from Sept. 1, 1936.

PARCEL 20

All taxes on this parcel are paid.

PARCEL 21

State and County:

1937	$ 26.69
1936	24.75
1930 to 1935 inc. — State bid	708.26

City of Detroit:

1937—	$128.85	1933—	$257.27
1936—	124.93	1932—	383.97
1935—	127.80	1931—	382.33

1934— 197.16		1930—	371.90 Wiltsie tax cert.

Special assessment—City bid 3/31/34 35.57
Special assessment—City bid 6/12/35 37.38
Special assessment—City bid 6/8/37 40.38
CR. from Delinquent 7-yr. plan $ 8.91

PARCEL 22

State and County:

1937 $ 18.27
1936 16.94
1930 to 1935 inc. — State bid 285.79

City of Detroit:

1937—$88.19		1933—	$ 99.41
1936— 85.50		1932—	126.08
1935— 87.47		1931—	158.42
1934— 90.83		1930—	149.61 Wiltsie tax cert.

Special assessment—City bid 3/31/34 $2,263.40

PARCEL 23

State and County:

1937 $ 40.03
1936 37.12
1930 to 1935 inc. — State bid 535.55

City of Detroit:

1937—$193.28		1933—$201.72	
1936— 187.38		1932— 247.04	
1935— 191.70		1931— 274.02	
1934— 199.07		1930— 258.65	Wiltsie tax cert.

PARCEL 24

State and County:

1937 $ 8.04
1936 7.45
1930 to 1935 inc. —State bid 138.53

City of Detroit:

1937—	$38.82	1933—	$43.85	
1936—	37.63	1932—	58.82	
1935—	38.50	1931—	70.99	
1934—	39.98	1930—	67.15	Wiltsie tax cert.

PARCEL 25

State and County:

1935	$ 11.05
1936	10.24
1930 to 1935 inc. — State bid	161.25

City of Detroit:

1937—	$53.34	1933—	$ 64.32	
1936—	51.71	1932—	116.13	
1935—	52.90	1931—	142.75	
1934—	54.94	1930—	150.71	Wiltsie tax cert.

Special assessment—City bid 6/12/35 $38.39

PARCEL 26

State and County:

1937	$11.16
1936	10.34
1930 to 1935 inc.—State bid	156.78

City of Detroit:

1937—	$53.86	1933—	$57.67
1936—	52.22	1932—	71.78
1935—	53.42	1931—	82.21
1934—	55.48	1930—	64.08

PARCEL 27

State and County:

1937	$ 7.55
1936	7.00
1930 to 1935 inc. — State bid	109.60

City of Detroit:

1937—	$36.43	1933—	$36.67
1936—	35.33	1932—	50.37
1935—	36.14	1931—	58.98
1934—	37.53	1930—	46.85

PARCEL 28

State and County

1937	$ 6.13
1936	5.68
1930 to 1935 inc. — State bid	88.90

City of Detroit:

1937—	$29.57	1933—	$30.56
1936—	28.66	1932—	38.01
1935—	29.33	1931—	48.80
1934—	30.46	1930—	37.10

Special assessment—City bid 3/31/34	$19.28
Special assessment—City bid 6/12/35	20.37
CR. from Delinquent 7-yr. plan	2.89

PARCEL 29

State and County:

1937	$23.63
1936	21.91
1934 and 1935 — State bid	65.09
** 1930 to 1932 inc. — 10 yr. plan	127.60

City of Detroit:

1937—	$114.06	1933—	$137.41
1936—	110.58	1932—	161.61
1935—	122.53	1931—	167.10
1934—	135.98	1930—	82.94

CR. from Delinquent 7-yr. plan $102.60

PARCEL 30

State and County:

1937	$ 9.08
1936	8.42

*1934 reassessed		11.37
1930)		
1931)		
1932)	State bid	252.41
1933)		
1935)		

City of Detroit:

1937—$43.83	1932—$115.83		
1936— 42.49	1931— 165.46		
1935— 43.47	1930— 165.78	Wiltsie tax cert.	
1934— 55.75	1929— 84.95	Faust tax cert.	
1933— 75.74			

** 10-year bears interest 5% per annum from Sept. 1, 1937.

* 1934 reassessed bears interest ¾% per month from March 1 1938.

PARCEL 31

All taxes on this parcel are paid.

PARCEL 32

All taxes on this parcel are paid.

PARCEL 33

State and County:

1937	$ 72.47
1936	67.19
1930 to 1935 inc. — State bid	1,192.42

City of Detroit:

1937—$349.86	1933—$368.64		
1936— 339.18	1932— 546.25		
1935— 347.01	1931— 667.06		
1934— 360.36	1930— 644.98	Wiltsie tax cert.	

PARCEL 34

All State and County taxes on this parcel are paid.

City of Detroit:

Balance due under the 7-year plan for the years 1931 and 1932 $343.41
This bears interest at 5% per annum from April 10, 1938.

PARCEL 35

State and County:

1937	$ 43.75
1936	43.15
1930 to 1935 inc. — State bid	621.17

City of Detroit:

1937—$ 11.24	1934—$213.22
1936— 217.84	1933— 224.58
1935— 222.86	

PARCEL 36

State and County:

1937	$13.02
**1933 to 1935 inc. — 10 yr. plan	38.75
**1930 to 1932 inc. — 10 yr. plan	61.32

City of Detroit:

1937—$62.84	1933— $ 79.73
1936— 60.93	1932— 83.55
1935— 66.00	1931— 105.70
1934— 68.54	1930— 90.75
Special assessment—City bid 6/19/35	$11.87
CR. from Delinquent 7 yr. plan	$41.91

PARCEL 37

State and County:

1937	$12.03
1936	11.16
1930 to 1935 inc. — State bid	220.90

City of Detroit:

1937—$58.09	1933—$ 71.75

1936—	56.31	1932—	84.76
1935—	62.85	1931—	131.53
1934—	65.27	1930—	110.61

PARCEL 38

All taxes on this parcel are paid.

PARCEL 39

State and County:

1937	$ 19.85
1936	18.41
1930 to 1935 inc. — State bid	362.14

City of Detroit:

1937—	$95.85	1933—	$100.20
1936—	92.92	1932—	138.15
1935—	95.07	1931—	226.01
1934—	94.91	1930—	195.44

** 10 year plan bears interest 5% per annum from Sept. 1, 1938.

PARCELS 40, 41, 42, 43

All taxes on these parcels are paid.

PARCEL 44

State and County:

1937	$ 20.24
1936	18.76
**1930 to 1932 inc. — 10 yr. plan	126.64

City of Detroit:

1937—	$ 97.69	1933—	$112.66	
1936—	94.72	1932—	146.89	
1935—	96.90	1931—	178.51	
1934—	116.67	1930—	194.82	Wiltsie tax cert.

CR. from Dilinquent 7 yr. plan $65.08

PARCEL 45

State and County:

1937	$ 9.41
1936	8.72
1930 to 1935 inc. — State bid	147.31

City of Detroit:

1937—	$45.41	1933—	$55.29
1936—	44.03	1932—	65.76
1935—	45.05	1931—	80.12
1934—	46.98	1930—	66.80
Special assessment—City bid 3/31/34			$99.88
CR. from Delinquent 7 yr. plan			$41.75

PARCEL 46

State and County :

1937	$ 10.50
1936	9.74
1930 to 1935 inc. — State bid	207.38

City of Detroit:

1937—	$50.70	1933—	$ 63.52
1936—	49.14	1932—	87.78
1935—	50.27	1931—	126.31
1934—	49.77	1930—	102.74
Special assessment—City bid 3/31/34			$207.60
Special assessment—City bid 6/12/35			5.89

** 10 year plan bears interest 5% per annum from Sept. 1, 1937.

PARCEL 47

State and County: and
City of Highland Park

1937	$ 223.05
1936	211.54
1930 to 1935 inc. — State bid	2,390.70

City of Highland Park:
and School District
1938—$176.80

PARCEL 48

State and County:

1937	$ 7.06
1936	6.54
1930 to 1935 inc. — State bid	192.81

City of Detroit:

1937—	$34.06	1933—	48.10
1936—	33.02	1932—	63.65
1935—	33.78	1931—	133.87
1934—	35.08	1930—	112.83

Special Assessment—City bid 3/31/34 $107.28
CR. from Delinquent 7-yr. plan 16.08

PARCEL 49

State and County:

1937	$ 7.66
1936	7.10
1930 to 1935 inc. — State bid	147.89

City of Detroit:

1937—	$36.97	1933—	$41.45
1936—	35.84	1932—	67.26
1935—	36.66	1931—	88.47
1934—	38.07	1930—	74.56

PARCEL 50 (Lot 1)

State and County:

1937	$9.13

City of Detroit:

1937	$44.09
1936	42.74

PARCEL 50 (Lot 2)

State and County:

1937	$10.12

City of Detroit:

1937	$48.85
1936	47.35

Approved:
JOHN H. WITHERSPOON,
Asst. Corp. Counsel, City of Detroit.
DUNCAN C. McCREA, Pros. Atty.
by GARFIELD A. NICHOLS.
RAYMOND W. STARR, Attorney General, State of Mich.
by WILLIAM F. CONNALY, Asst. Attorney General.
EARL B. YOUNG,
City. Atty. for City of Highland Park.

EXHIBIT D

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION
IN EQUITY

United States of America,
Plaintiff
vs.
JOHN W. PAUL, et al
Defendants
NO. 7544

STIPULATION.

To the Honorable Judges of the District Court of the United States for the Eastern District of Michigan, Southern Division:

Now comes Mary Emily Wiltsie Field, Executrix of the Estate of Charles H. Wiltsie, Deceased, and represents as follows:

Stipulation of Facts

1. That during his life time Charles H. Wiltsie purchased tax claims upon certain parcels of property described in the Bill of Complaint on file herein, and which in said bill of complaint, paragraph 18, are numbered, and that subsequently certificates were issued to the said Charles H. Wiltsie, now deceased.

2. That the following is a list of the properties by parcel number, certificate number and the amount of the claim of the estate of the said Charles H. Wiltsie, Deceased:

Parcel No.	Certificate No.	(Face) Amount
3	59—pd.	
6	62—pd.	
7	98—pd.	
12	295	$232.72
13	493	145.83
14	494	176.86
15	499	140.29
16	519	239.14
17	5228	87.76
18	743	313.61
19	746	304.74
21	5651	371.90
22	4615	149.61
23	4884	258.65
24	6927	67.15
25	6996	150.71
30	6514	165.78
33	6390	644.96
44	4555	194.82

The amounts set forth in the next preceding paragraph are the face amounts set forth on the certificates, each of which is subject to interest, penalties, etc., provided by law.

MARY EMILY WILTSIE FIELD,
Executrix of the Estate of
Charles H. Wiltsie, Deceased.

JOINT EXHIBIT-A

THIS INDENTURE Made this 13th day of February in the year of our Lord one thousand nine hundred and thirty-one Between Lena Paul, widow of John P. Paul, deceased, of the City of Detroit, Wayne County, Michigan, party of the first part, and John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul, of the same place, and being all of the living children of party of the first part, parties of the second part.

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One ($1.00) love and affection and other good and valuable consideration to her in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, alien and confirm unto said parties of the second part, jointly in undivided equal interest, and their heirs and assigns, Forever, all of her right, title and interest in any and all real estate standing in her name or in which she has any interest by purchase, inheritance, right of succession or otherwise located and being in the County of Wayne and State of Michigan.

This conveyance is subject to any restrictions of record on the use and improvement of any of the said properties and subject to any encumbrances on any of the said properties, payment of which is to be assumed and paid equally by and between parties of the second part herein.

Provided, however, from this conveyance there is excepted the homestead of party of the first part at Number 207 King Avenue, located on the Northeasterly corner of John R Street and King Avenue in the City of Detroit, Michigan, contemporaneously herewith otherwise conveyed by party of the first part herein.

In so transferring and conveying the premises to the said several parties of the second part, it is on condition that they

continue to hold and manage the said properties jointly, and that none of the said several properties be disposed of without the consent and concurrence of all of them, and that none of the said parties of the second part shall otherwise sell or dispose of his or her interest in the said properties or any of them, and that in the event of any disposition by the joint action and concurrence of all of them that the proceeds of such disposition belong to and be divided equally between the said parties of the second part, or in the event of the death of any of them, shall belong to and be divided equally between the survivors of them, except that in the event of any of them deceasing, the share of such deceased child, if survived by any child or children, shall belong to his or her child or children, including the widow of any such deceased male child, but in such event such widow shall have only a life use and interest in the said properties in accordance with the statutes of descent and distribution, and shall have no right for disposing of such interest, either by conveyance, will or otherwise.

Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining: To have and to hold the said premises, as herin described, with the appurtenances unto the said parties of the second part, and to their heirs and assigns, Forever; none except as hereinbefore stated.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of

E. A. FINK

MARGARET McDOUGALL

LENA PAUL (L. S.)

STATE OF MICHIGAN,
COUNTY OF WAYNE } SS:

On this 13th day of February in the year one thousand nine hundred and thirty-one before me, a Notary Public, in and for said county, personally appeard LENA PAUL to me known to be the same person described in and who executed the within instrument, who then acknowledged the same to be her free act and deed.

MARGARET MCDOUGALL,
Notary Public, Wayne, County, Michigan.

My commission expires July 25, 1931.

Lena Paul to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul and Charles P. Paul.

REGISTER OF DEEDS OFFICE
WAYNE COUNTY, MICH. } SS:

This instrument was received for record June 20, 1931 at 11:20 o'clock a. m. and recorded in Liber 3613 of Deeds, on page 291.

OTTO STOLL,
Register of Deeds.

Paid $1.00

JOINT EXHIBIT B

THIS INDENTURE made this 13th day of February in the year of our Lord one thousand nine hundred and thirty-one between Lena Paul, widow of John P. Paul, deceased, of the city of Detroit, Wayne County, Michigan, party of the first part, and John W. Paul and Nettie B. Paul, of the same place, parties of the second part.

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One ($1.00) Dollar, love and affection and other good and valuable consideration to her in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, alien and confirm unto said parties of the second part, in equal undivided interest and to the survivor of them, and their heirs, representatives and assigns, Forever all that certain piece or parcel of land constituting the homestead of party of the first part situate and being in the City of Detroit, county of Wayne, and State of Michigan, and described as follows, to-wit: The Northeast corner of John R Street and King Avenue, being house number 207 King Avenue, subject to any restrictions of record upon the use or improvement thereof, and subject to any encumbrance on the said premises, all furnishings and equipment belonging to and now in use with the said Premises, I give outright to my daughter, Nettie B. Paul.

In so conveying the said premises to parties of the second part, it is on condition that neither of them may, without the consent of the other, dispose of his interest in the said premises, and that upon any sale or other disposition of the premises the proceeds thereof shall be divided equally between them, except that if not disposed of during the joint lives of the parties of the second part, and the premises thereupon becoming the sole property of the survivor, it is a con-

dition of such survivorship and sole interest in the property, that if the deceased one of the two grantees herein shall leave a child or children him or her surviving, that the undivided one-half interest in the said property, or the proceeds of the disposition thereof shall belong to and go to the children of such deceased one of parties of the second part herein by right of representation.

Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining: To have and to hold said premises, as herein described, with the appurtenances unto the said parties of the second part, and to their heirs and assigns, Forever, except as hereinbefore stated.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written. Signed, sealed and delivered in presence of

LENA PAUL (L. S.)

E. A. FINK

MARGARET MCDOUGALL

STATE OF MICHIGAN, }
COUNTY OF WAYNE } SS:

On this 13th day of February in the year one thousand nine hundred and thirty-one before me, a Notary Public, in and for said county, personally appeared Lena Paul, to me known to be the same person described in and who executed the within instrument, who then acknowledged the same to be her free act and deed.

MARGARET MCDOUGALL,
Notary Public, Wayne County, Michigan.

My commission expires July 25, 1931.

LENA PAUL
TO
JOHN W. PAUL and NETTIE B. PAUL

REGISTER'S OFFICE
Wayne County } SS.

This instrument was presented and received for Record, this day of Sep. 28, A. D. 1933 at 1:40 o'clock P. M., and Recorded in Liber 4012 of Deeds, on Page 173. A certificate having been furnished in compliance with §4134 Compiled Laws, 1915.

HAROLD E. STOLL,
Register of Deeds.

Paid 75c.

COMPLETE TRANSCRIPT OF PROCEEDINGS AND TESTIMONY

(Filed March 4, 1941)

Proceedings had and testimony taken before Honorable Edward J. Moinet, Judge of the United States District Court, in the Federal Building, in the City of Detroit, Michigan, on the 14th day of November, A. D. 1938.

APPEARANCES:

MR. J. THOMAS SMITH, Assistant U. S. Attorney, appearing on behalf of the Government.

MESSRS. EDW. S. REID, JR., and E. E. EAGAN, Counsel on behalf of the Detroit Bank, Detroit Trust Company, and Ernest H. King, Receiver.

JOHN H. WITHERSPOON, Esq. Assistant Corporation Counsel for the City of Detroit.

MR WISEMAN, appearing on behalf of B. C. Schram, Receiver of First National Bank, Detroit.

Mr. Smith: May it please the Court, this is a case of Paul vs. United States, or, the United States vs. Paul and others. This is the case that was before your Honor a while back in which a stipulation of the facts, or most of the facts, was filed and your Honor set today as limits for all briefs to be filed and for such other testimony as might be introduced. The Government has two formal matters to introduce into the testimony and it will take five minutes, and I think Mr. Witherspoon would like to stipulate some evidence, and Mr. Reid wants to introduce in evidence things that we will object to.

The Court: What is this action—a tax matter?

Mr. Smith: Yes, your Honor, it is a suit to foreclose an estate tax lien.

(Thereupon Government's Exhibits 1 and 2 were marked by the Reporter.)

Mr. Smith: I will now offer in evidence Government's Exhibits 1 and 2, No. 1 being a certified copy of the notice of tax liens, filed with the clerk of the court, Federal District

Court; Exhibit No. 2 being a certified copy of notice of tax lien filed with the Register of Deeds office. I offer those in evidence.

Mr. Reid: I would like to ask Mr. Smith if those are the only notices that have been filed, in that there has been no others of earlier filing.

Mr. Smith: I will state that I have no knowledge of any other being filed.

Mr. Reid: If that is it, I think we had better get the Collector in here and get his testimony, that he has not filed any others.

Mr. Smith: Mr. Lungerhauser can testify to that.

The Court: That this is the only lien filed?

Mr. Reid: Yes.

The Court: This is one lien.

Mr. Reid: It is my understanding that this was filed as late as Tuesday, and I want it certain that there was no claims filed at any earlier date.

The Court: And no later.

Mr. Reid: And one later. We have no objection to these documents.

The Court: They may be admitted in evidence.

(Thereupon documents were marked Government's Exhibits 3 and 4, by the Reporter, and were received in evidence.)

JAY SHEDD, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Smith:

Q. Mr. Shedd, where do you live?

A. Detroit.

Q. For whom do you work?

A. The United States Government.

Q. What department of the United States Government?

A. Treasury Department.

Q. Under whose immediate supervision?

A. Collector of Internal Revenue.

Q. What is your job?

A. Well, it is called chief bookkeeper.

Q. Chief bookkeeper for the Collector of Internal Revenue?

A. Yes, sir.

Q. And as such, do you have charge of the books and records of the Collector of Internal Revenue, for the Eastern District of Michigan?

A. Yes, sir.

Q. I show you Government's Exhibit 3 and ask you if you can identify that?

A. Yes, sir.

Q. What is it?

A. It is an assessment certificate showing the assessment of certain taxes by the Commissioner of Internal Revenue.

Q. I show you Government's Exhibit 4. Can you identify that?

A. Yes, sir.

Q. What is it?

A. It is the assessment made by the Government—as made by the Commissioner of Internal Revenue.

Q. Against who?

A. It is against the estate of John P. Paul.

The Court: Of who?

A. John P. Paul.

The Court: John P. Paul?

A. Yes, sir.

Q. (By Mr. Smith:) Mr. Shedd, can you tell whether demand was made upon the estate of John P. Paul for payment of this assessment?

A. Yes, sir.

Q. What is the date of that demand?

A. February 25th, 1933.

Q. What is your usual way of making a demand?

A. The statute provides where demand shall be made either by person or by mail, the notice is mailed to the address of the taxpayer.

Q. And notice was mailed?

A. Notice was mailed.

Q. Is an entry made upon your books of which Exhibit 4 is a part, of the date of that demand?

A. Yes, sir.

Q. Where is that shown?

A. There is on the right hand corner a little square with some lines across it indicating the notice was issued on February 25th, 1933.

Q. Notice was issued and mailed to the estate of John P. Paul?

A. Yes, sir.

Q. Does Exhibit 4 also show the date of issuance of a warrant of restraint?

A. Yes, sir.

Q. What date was the warrant of restraint issued?

A. April 10th, 1933.

Q. Does that record show here that warrant of restraint was returned unsatisfied or not?

A. It would indicate that it was returned on August 1st, 1933.

The Court: Returned to what?

A. Returned to the Collector of Internal Revenue's office unsatisfied.

Q. (By Mr. Smith) Is Government's Exhibits 3 and 4 part of the books and records of the Collector of Internal Revenue?

A. Yes, sir.

Q. And those are kept under your supervision and control?

A. Yes, sir.

Q. They are the original entries?

A. They are the original entries.

Mr. Smith: We offer Government's Exhibits 3 and 4. I should ask at this time, your Honor, to be allowed to have photostatic copies of these made and substitute them for the original records after they are in evidence.

The Court: No objections? They may be received and photostatic copies substituted. I take it that is satisfactory.

Mr. Reid: Yes, it is.

Mr. Smith: The Government has no more testimony, your Honor, and I think this completes the case.

By Mr. Reid:

Q. Mr. Shedd, do you have charge of the filing of these notices that are recorded?

A. Which notices?

Q. Well, there is a notice of the lien claimed in this case —one is recorded with the Clerk of the District Court, and one is recorded with the Register of Deeds of Wayne County.

A. I do not at the present time.

Q. They are under the name of the Collector? You do not have charge of it?

A. Not now.

(Witness excused).

Mr. Reid: Your Honor, there is one thing I have no objection to. We do not know whether the facts of the case as stipulated, whether those facts should be introduced in evidence, or whether it be filed as part of the record. I would like to have it stipulated that stipulated facts may be introduced and received in evidence and considered part of the record in this case.

The Court: It may. Who is calling the next witness?

Mr. Reid: Apparently I am calling him.

The Court: Has the Government rested?

Mr. Smith, Yes, sir.

Mr. Reid: We are calling him under the statutes, your Honor. He is the Government's employee, and an adverse witness.

The Court: I am not so sure that that Michigan Statute applies to the Federal Court.

Mr. Reid: Well, perhaps it is a petty point, but I think the Government should admit in this case they are claiming a lien and claim that it is filed on a certain date in the Register of Deeds office. Now, it seems to me proper for me to call on them to state that they have not filed it at any earlier time in the Register's office, and then compel me to

bring in the Register of Deeds to prove negative that lies within our knowledge.

The Court: I understand that is the stipulation on this record.

Mr. Reid: Well, the stipulation does not specify on that point, I don't believe.

The Court: I understand your stipulation is that no other tax claims or liens were filed by the Government, exhibits 1 and 2,—one filed with the District Clerk and the other with the Register of Deeds; before this or since this?

Mr. Smith: I think that is true.

Mr. Reid: If that is true, we won't pursue it any further.

The Court: Whether it is on the stipulation, it is in the record now. This is a stipulation on the record by the Government.

Mr. Reid: That is satisfactory then.

The Court: I don't know who all of these defendants are or who represents them.

Mr. Reid: We represent the Detroit Bank and the Detroit Trust Company, and Ernest H. King, in a lot of moratorium cases. We, of course, claim that we are bonafide incumbents, and are not subject to the Government's liens. I have here our brief which I wish to file at this time. Now, we want to offer testimony that will indicate that we are bonafide purchasers and without notice of the Government's lien. I understand, Mr. Smith is going to object to that testimony on the ground that it is not material. We claim that this is an equity case which the Government is seeking a remedy of foreclosure and that they are compelled to equity and that our equitable situation is relative, can be shown.

The Court: What does the stipulation of facts show?

Mr. Reid: The stipulation of facts shows that we have made the mortgages. Of course, it does not stipulate what is really a state of mind—that is, our knowledge of this lien is not stipulated. The amount of the mortgage is shown and it

is unpaid, but it is not shown that this represents an actual fair transaction, which I want to show.

The Court: The liens were actually made?

Mr. Reid: Yes, sir, unless Mr. Smith wants that stipulated.

The Court: You are looking for proofs showing they never had any notice or knowledge—no actual notice or knowledge.

Mr. Reid: Yes, sir.

The Court: I would say if we have that proof it should be received. Whether it is material or not is a question for the Court to settle. They are getting down to the point as to whether there is any defense for this claim.

Mr. Smith: Our position, your Honor, is whether they had actual notice or not is immaterial. The Statute provides that the estate tax, the assessment made by the Commissioner relates back from the date of the death until paid off. Now, it is immaterial whether they knew about it and therefore they couldn't have any reason for putting it into evidence here.

The Court: It would depend on the decision of the Court. How long did this run before you proceeded to foreclose? This lien was filed in 1933?

Mr. Reid: It was filed almost the last day of the calendar.

The Court: You haven't given me the date of the lien. Demand was made February 25th, 1933, and notice was mailed on February 25th, 1933, and warrant of restraint, April 10th, 1930.

Mr. Smith: 1933, your Honor.

The Court: The warrant of restraint was returned unsatisfied?

Mr. Smith: Yes, on August of 1933, and it was issued April, 1933.

The Court: And the warrant of restraint was issued April 10th, 1933.

Mr. Reid: I understand your Honor, it is a notice filed first with the Collector.

The Court: You mean with the clerk?

Mr. Reid: With the clerk by the Collector—with the clerk.

The Court: What was the date of that filing?

Mr. Reid: December, 1935, I think was the Register of deeds—

The Court: It says December 26th, 1935.

Mr. Reid: Mr. Paul died May, 1926, so it was nine and a half years later that there was first any notice which would come to the attention of an incumbent.

The Court: This was a tax for when? 1926?

Mr. Reid: Yes.

Mr. Smith: He died May 5th, 1926.

The Court: Paul died?

Mr. Smith: Yes.

Mr. Reid: It is on his estate that this tax imposed.

Mr. Smith: And the assessment was made on February 17th, 1933.

The Court: The assessment was made when?

Mr. Smith: February 17th, 1933.

The Court: In what way is that made?

Mr. Smith: By the Commissioner of Internal Revenue.

The Court: You mean he just answers that the assessment was made, is satisfactory on the records?

Mr. Smith: Satisfactory on the records.

The Court: Mr. Paul died May 5th, 1926, the assessment was made—

Mr. Smith: February 17, 1933.

The Court: That was seven years after the death?

Mr. Reid: And long after all these mortgages were made.

The Court: Well, are all the dates in this record showing when the mortgages were made?

Mr. Reid: Yes, they are.

The Court: Made in what manner?

Mr. Smith: By the Commissioner of Internal Revenue signing an assessment list and forwarding it to the Collector of Internal Revenue in Detroit. That is, when the tax becomes due.

The Court: When does it become a lien?

Mr. Smith: It becomes a lien back at the date of Paul's death—it is a lien from the date of his death, for a period of ten years after unless paid in the interim.

The Court: The assessment in 1933—was any notice given to Mr. Paul?

Mr. Smith: Yes, sir, Mr. Shedd's notice was that of February 25th, 1933.

The Court: Notice was mailed?

Mr. Smith: Notice was mailed to the estate demanding a payment. On April 10th, 1933, a warrant of restraint was returned unsatisfied, unpaid. The reason for the statute is obvious because if a man dies, it is always several years before the Commissioner of Internal Revenue can have the records audited and collection made.

The Court: Isn't there any provision in law requiring notices should be filed? This notice was not filed until December 26th, 1935.

Mr. Smith: They couldn't file the notice sooner than that until the return was examined. The executor is requested to file the estate tax return disclosing the value of the assets and so forth, of the deceased that were transmitted by death, in which he discloses the amount and pays the tax just like an income tax and the Commissioner has to audit those accounts and if there is a deficiency, to make a deficiency assessment.

The Court: Does the statute require that the tax lien filed with the Register of Deeds state the amount of the tax?

Mr. Smith: You wait until you get a return from the estate, the widow or otherwise. In other words, I think your estate tax return was not filed there at all.

Mr. Reid: That is not correct—it was filed and the tax paid.

The Court: You mean the estate tax was paid?

Mr. Reid: Yes, sir. It was, and the returns filed and an estate tax paid to the Government. Then the Government claims that the entire property that Mr. Paul and his wife owned was includable in the estate and that was the issue.

The Court: Well, you got two Pauls here—here is a John W. Paul.

Mr. Reid: John W. is a son. The property is derived from the estate of John P. Paul. John W. is one of the sons—he is just an heir. The law of Michigan was read to be, "all that dwelled with the estate," and also a law of the United States, "that such property not included in the estate of a deceased person," and it was not until 1931 that the Supreme Court of the United States decided otherwise in Tyler vs. The United States, which accounts for the fact that these incumbents went ahead because they had every reason to believe they were perfectly safe in doing so, and it was an entirety property.

The Court: Paul survived?

Mr. Reid: The wife survived, and she is the one who made these mortgages. They were made, most of them, by her as surviving tenant.

The Court: What part of this estate do you claim lien on? On the property that descended to the widow?

Mr. Smith: Yes, sir.

Mr. Reid: That is evidently what they are claiming.

The Court: This is a funny case.

Mr. Smith: It is, your Honor.

The Court: Let me ask you—I don't know whether I remember or not—under the Michigan law they would de-

pend a good deal upon whether or not under the law, you could make a claim in either interest in that estate. The Government is bound by what the Michigan law is.

Mr. Smith: The Government is not bound by the Michigan law in regard to liens.

The Court: The Government is bound by the Michigan law as to what the Michigan taxes are.

Mr. Smith: Congress passes its own laws and makes its own liens, and effects the collection of its own taxes.

The Court: That might be true, but Michigan can provide who owns the property. Congress can't levy any lien against somebody on certain property which he does not own.

Mr. Smith: Congress cannot say who does or does not own the property, but it can say who will pay the tax upon property that it does levy a lien against.

The Court: No, it can't say that. It can simply say what property it will be liable for.

Mr. Smith: That is right, and that is what we said in this case.

The Court: Provided that they find the particular person who owns the property. You have got a funny estate here.

Mr. Smith: There is no question about who owns the property, your Honor.

The Court: They changed the law of Michigan that regards the estate by the entirety. I don't know, but this tax is levied against the Paul estate.

Mr. Smith: It is levied against the estate of Paul, John P. Paul, and included in the estate of John P. Paul was this entirety property.

Mr. Wiseman: There is one difference, the one that we are—B. C. Schram is interested in, was conveyed—was originally property by the entirety conveyed to a daughter. The mortgage was made by the bank to the daughter so it couldn't have any way passed through their hands upon his death, or any other time. Of course, it was made within two years of

his death and I understand that it was conveyed before his death by the wife and the husband to this daughter.

The Court: What is the tax?

Mr. Smith: $31,000.00 plus interest, interest date running from February 25th, 1933, your Honor.

The Court: February 25th, 1933?

Mr. Smith: Yes.

The Court: Fifteen years. Now, you have got your stipulated facts.

Mr. Smith: Our brief has been filed and we have—

The Court: A brief filed by Mr. Schram, the Receiver, and a brief here filed by all of the defendants except Schram.

Mr. Reid: No, it is the Detroit Bank, the Detroit Trust Company.

The Court: Who appears for the estate of Paul, here?

Mr. Reid: Mr. Lorenzo, and he has given us a letter which he wants us to pass to you, as to his situation.

The Court: He wants to introduce proof?

Mr. Reid: He apparenty does.

The Court: Have you seen this letter?

Mr. Smith: I saw it this morning. I didn't know he wanted to introduce any more proofs.

The Court: Has he filed the stipulation of facts?

Mr. Smith: Yes, he has.

The Court: What else does he want to introduce?

Mr. Smith: I don't know.

Mr. Reid: We just got that last Saturday. I just know he is another party to the case. I know nothing about his business.

The Court: The only thing I can do, is have him produce his proofs and whether or not they are material, I can rule upon them when they are presented. I thought the issues of fact were closed.

Mr. Smith: That was my impression.

Mr. Reid: It has been settled by the Supreme Court of the United States that the entire property is includable in the gross estate. That is the law today and it was not in the law when this man died and when our mortgage was made. The Commissioner of Internal Revenue stated it was not in the law and I presume tax-payers are entitled to rely on what he says.

Mr. Smith: The law, estate law, is the same law in effect today as it was three or four or five years ago when this rose. The law was just exactly the same. Some people thought the law was different when the Supreme Court settled it. He might have misinterpreted the law.

The Court: Suppose there was a joint title held there between two individuals—husband and wife?

Mr. Smith: I wouldn't be prepared to say on that, your Honor.

The Court: They are not levying any tax against the wife?

Mr. Smith: No, but the Supreme Court has settled it. If joint property is held between two in an entirety that is includable for estate tax purposes. That is the only thing we are interested in, is for the estate tax purpose.

The Court: Is it an estate in the case here?

Mr. Reid: Tyler against the United States, which was decided in 1931, held that estates by the entirety were in the gross estate but they were created after the first estate law in 1916. It was not decided until Bowers vs. Helvering in 1938. But we are offering an excuse as to why we didn't investigate this estate because we had no reason to believe that it was part of it, and therefore we are bonafide encumbents.

The Court: Let us get our proofs in here first. What reason does this man give for not being here? This is dated November 11.

Mr. Reid: We received that in our office Saturday morning. Why he wrote to us instead of to the court or instead of coming here I don't know.

The Court: Is there someone representing him? This gentleman, who is he?

Mr. Witherspoon: Your Honor, I represent the City of Detroit, and I would like to have two or three days to complete my brief. I got into a trial and I wasn't able to finish it. And there is one other thing—when we prepared the stipulation we didn't include in the evidence submitted the pertinent provisions of the charter of the City of Detroit, the Statutes of the State of Michigan which counsel on both sides will want. I understand that it is agreeable to Mr. Smith to stipulate that the tax provisions of the charter of the City of Detroit and the Statutes of the State of Michigan may be considered in evidence in this case. Is that agreeable, Mr. Smith?

Mr. Smith: It is agreeable to us, your Honor.

Mr. Reid: Agreeable to me.

The Court: You can embody those in your brief—the provision of the statutes and the city charter.

JOHN C. DILWORTH, called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Reid:

A. Mr. Dilworth, are you employed by the Detroit Bank?

A. Yes.

Q. Were you employed by the Detroit Bank at the time of the death of John P. Paul, in 1926?

A. Yes, sir, I was.

Q. What was your official capacity at that time?

A. I was the official in charge of the Mortgage Department at that time.

Q. Were you vice president of the bank?

A. I don't believe at the earlier part but a little later on from this later mortgage. I was assistant cashier at the time.

Q. Are you familiar with the mortgages which the bank holds in the Paul matter?

A. Yes.

Q. Did you personally have charge of the closing of those mortgages?

A. I believe that I handled all of them.

Q. Can you tell from your own knowledge that the Paul —that Mrs. Paul or some member of the Paul family received a consideration of these mortgages?

A. Yes.

The Court: They received what?

Mr. Reid: Consideration of these mortgages.

A. Yes, we paid money to the Pauls. I think almost without exception the proceeds of the mortgages were transferred to their savings account.

Q. Is that true of all the mortgages?

A. All of the mortgages.

Q. Did the bank have knowledge of any claim of the United

States that there was an estate tax due from the estate of John P. Paul at the time you made these mortgages?

Mr. Smith: I would like to object to that, your Honor. First, it is incompetent, immaterial and irrelevant. It is immaterial what knowledge the bank has of the lien because the Statute itself creates the lien and the bank is presumed to have knowledge of the Statute. Whether or not they had actual knowledge does not affect the lien one way or the other.

The Court: He may answer.

Mr. Smith: I offer the further objection that Mr. Dilworth is not in a position to say whether the bank had or had not knowledge.

The Court: He is the man who would have charge of the mortgages. He may answer.

Mr. Smith: Exception.

A. No, we were guided by the attorney's written opinion.

The Court: I don't mean to intimate that this will be received—only if it is material. I am just receiving it as you do in equity cases.

Q. (By Mr. Reid) Can you explain what you mean by, "the attorney's opinion"?

A. It is customary, when the bank receives an application for a mortgage, after he looks at the property and has asked the applicant to supply the necessary papers to submit the abstract which has been brought down to date to the bank's attorney for a written opinion, and we have always been led to believe that all encumbrances on the property would be outlined by the attorneys, and we were not on guard for any estate tax lien of this kind.

Mr. Reid: I think that is all.

(Witness excused)

Mr. Wiseman: If your Honor please, there are just two matters that may be important and we would like some testimony on from the bank. That is, as I explained before, the property in which the bank is interested was conveyed by

John W. Paul and Lena Paul sometime before his death, and then was mortgaged by the daughter, Nettie Paul, to the bank. The stipulation of facts covers most of that in that this property was mortgaged to the bank, given at his death, and so forth. It does not state by whom it was mortgaged. In other words it does not show it was mortgaged by the daughter. I would like to have just that testimony just to supplement —

Mr. Reid: I have one other witness for the Detroit Trust Company.

VERNON C. FRATCHER, called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Reid:

Q. Mr. Fratcher, are you employed by the Detroit Trust Company?

A. Yes, sir.

Q. What is your position?

A. Trust officer.

Q. Were you, in 1927, employed by the Security Trust Company of Detroit?

A. Yes, sir.

Q. Did you have any knowledge of the mortgage described as No. 50 in the bill of complaint to the Security Trust Company for twenty-five hundred dollars made on February 25th, 1927 by Lena Paul?

A. Yes, the mortgage was closed under my supervision.

Q. Did Lena Paul actually receive the consideration of the mortgage—that is, twenty-five hundred dollars?

A. She did.

Q. Did the Security Trust Company have any knowledge of the claim of the United States for delinquent estate taxes on the estate of John P. Paul, deceased?

Mr. Smith: I object to that as being incompetent, immaterial and irrelevant to the issues in this lawsuit. Whether or not the Trust Company had any actual knowledge of the existence of a lien would make absolutely no difference to the lien, and to the further ground that this man can speak only for himself and can not speak as to what knowledge other members of the Detroit Trust Company might have in regard to the claims.

The Court: He may answer.

A. It had not.

(Witness excused)

(Thereupon a document was marked Government's Exhibit 5 by the reporter.)

EDWARD M. NEBUS, called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Wiseman:

Q. Your name, please?

A. Edward M. Nebus.

Q. Mr. Nebus, by whom are you employed?

A. First National Bank, Detroit

Q. Will you state your capacity in which you are employed?

A. Clerk in the mortgage department.

Q. You have charge of the mortgage records?

A. Yes, sir.

Q. I hand you document marked exhibit 5 and ask you if you can identify it.

A. This is a mortgage dated July 30, 1929 executed by Nettie Paul, First National Bank, in the amount of five thousand dollars.

Mr. Wiseman: May this be received in evidence?

Mr. Smith: No objection.

(Thereupon the document marked Government's Exhibit 5 was received in evidence.)

Mr. Wiseman: This is the mortgage from Nettie Paul, the original, and I would like to substitute a photostatic copy for the record if that is necessary.

Q. (By Mr. Wiseman) Mr. Nebus, will you state whether or not the records of the bank show how and when Nettie Paul received title to this property, if in fact she did?

Mr. Smith: I will object to that, your Honor, as being hearsay, the record of the bank being the best evidence this man being merely a clerk.

The Court: You can agree upon the title.

Mr. Wiseman: We want merely to show that this was made by transferee. In other words, it didn't ever go through

any estate records—it couldn't have. We now have shown that Nettie Paul made the mortgage and I want to show she received title to the property. If it is necessary I suppose we could be forced to bring in Wayne County records.

The Court: You can probably agree upon the date of conveyance. What I understand, counsel claim that all they wish to show is the date and the conveyance of this property by the Pauls to this Nettie Paul.

Mr. Wiseman: That is correct.

Mr. Smith: I should think we would have no objection at all.

The Court: Have you the abstract?

Mr. Wiseman: Yes "Warranty deed from John P. Paul and Lena Paul, his wife, to Nettie Paul, dated October 5, 1925 and recorded June 4, 1926 in Liber 2343, Page 465 of Deeds.

The Court: Paul and wife to Nettie Paul?

Mr. Wiseman: That is correct. Then the date of the death and so forth, is in this stipulation of facts. The description is on here.

The Court: Have you got all of these descriptions detailed in the statement of facts or have I got to go to the bill of complaint? Are these identified?

Mr. Smith: Yes, sir, they are sufficiently identified.

Mr. Wiseman: I think we can agree that this is Parcel 47. I will read the description into the record if that will clear up any doubts of it. It is lot 27, except that part taken for the widening of John R. Street, and lot 28 of Chadsey subdivision of the south half of lot 4 and north part of lot 3, quarter section 4, ten thousand acre tract, according to a plan recorded in the office of the Register of Deeds for Wayne County, Liber 9, on page 85, property situated in Highland Park.

(Witness excused)

Mr. Smith: All the other facts have been stipulated. I don't like to hold the case any longer.

The Court: Is the widow surviving?

Mr. Reid: No, she is dead now.

The Court: Just the children are alive?

Mr. Reid: One child is dead but there are about four or five children surviving.

The Court: Do they own some property that the tax covers?

Mr. Smith: I think they have conveyed most of it away now.

The Court: It doesn't make any difference. The only thing for us is to try to find the facts and then apply the law. There will be no issue of fact, I don't believe.

Mr. Smith: I don't think there is any disagreement as to the facts.

The Court: All right, you can have all the time you want to file your briefs. It will be quite a time before I can even work at this lawsuit because I am pretty well supplied right now.

Mr. Smith: Can we count the proofs closed, your Honor, unless Mr. Lorenzo comes in?

The Court: You can send him notice that unless he is prepared to present his proofs on or before the twenty-first, that is a week from today, then that is the end of it. He can't be expected to be notified of a hearing and then walk away and say he can't be here and then want to present his proofs, but we will give him more time because if we didn't he might come in and file a petition after we were fairly well started on the briefs, and so forth, and ask to have it reopened and be allowed to present proofs, and if he made a reasonable showing we couldn't prevent it. At least we shouldn't.

I HEREBY CERTIFY that I reported stenographically the proceedings in the above entitled matter, at the time and place hereinbefore set forth; that the same was thereafter

reduced to typewritten form, and that the foregoing is a true, full and correct transcript thereof.

R. FOREST BRENNER

Proceedings had and testimony taken before Honorable Edward J. Moinet, Judge of the United States District Court, in the Federal Building, in the City of Detroit, Michigan, on the 24th day of April, A.D. 1939.

APPEARANCES:

J. THOMAS SMITH, Esq., Assistant United States Attorney, Counsel on behalf of the Government;

CHARLES A. LORENZO, Esq.,

Counsel on behalf of the defendants John W. Paul, Frederick P. Paul, Ruby H. Paul, Nettie B. Paul, Riney T. Paul, and Amelia L. Paul.

The Court: The United States vs. John W. Paul. How many witnesses have you here in this Paul matter?

Mr. Lorenzo: One, your Honor.

The Court: All right. Call your witness.

NETTIE PAUL, called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lorenzo:

Q. What is your name, please?

A. Nettie Paul.

Q. You are a daughter of John W. Paul and Lena Paul?

A. John P. Paul.

Q. John P. Paul?

A. Yes, sir.

Q. And Rheine Paul and Frederick Paul are your brothers?

A. Yes, sir

Q. Do you recall in 1901 when your parents were engaged in the grocery business in the city?

A. Yes, sir.

Q. Do you remember when they disposed of that grocery business?

A. In the month of December of 1901.

The Court: Read that answer.

(Thereupon, the answer was read by the Reporter.)

Q. Where were you living at the time?

A. We were living at the corner of Adams Avenue and Beaubien Street, up above the grocery store.

Q. Who lived there besides your father and mother?

A. Our entire family, my brothers and sisters.

Q. Your brothers and sisters?

A. Yes, sir

Q. State whether or not at any time there was a conversation or discussion, a talk, between your mother and father and you children with respect to the real estate business. Just answer that yes or no.

A. Yes, sir.

Q. About when did that take place?

A. I think it was around the first part of December, right after we sold the grocery store.

Q. In what year?

A. 1901.

Q. Where did it take place?

A. In the home, upstairs over the store.

Q. Who was present at that conference?

A. My father and mother and the family, my brothers and sisters.

Q. State whether or not you were present.

A. Yes, sir.

Q. What did your father and mother, or either of them, say with respect to the real estate business?

Mr. Smith: Your Honor, I object to that question as being incompetent, immaterial and irrelevant to the issues in this case. Attempts to set up a trust in property by order of the agreement is contrary to the Statute of the State of Michigan.

The Court: I will receive it, subject to the objection.

Mr. Smith: Your Honor is sustaining my objection?

The Court: I am inclined to hold this can't be done, but I am receiving it subject to your objection, and I will determine the agreement, prices being furnished, and so forth, whether or not their claims can be sustained as to the rights and interests in this property. It is very doubtful, but I am giving them the benefit of their proofs. All of this evidence of this particular witness as to the claim made with regard to this real estate of these people is received subject to the objection of the plaintiff, the United States.

Mr. Smith: For the purpose of the record, your Honor, three witnesses testified.

The Court: Was it three?

Mr. Smith: Yes, three of them. Will you give their names for the record.

The Court: Those three gentlemen sitting right there.

Mr. Smith: John W. Paul, Rheine Paul and Fred Paul. For the purpose of the record, your Honor, I would like it to show that at the time that testimony was taken I made the same objection to that testimony which covered the same conversation and the same purported alleged agreement, and at that time your Honor made the same ruling, sustaining our objection, or allowed the testimony to be taken under the equity rule for the purpose of appeal.

Q. (By Mr. Lorenzo) Will you please state what your father and mother, or either one of them, said on that occasion?

A. (No response).

The Court: What was said at that time between them?

A. The question come up what they were going to do now, being we were out of the grocery business, and Father said if we would all stay together that we would be partners in the business, and that as the youngest member of the family become of age our names would all appear in the property with father and mother.

Q. What did you say to that proposition?

A. I was satisfied to it.

Q. Did the older children have anything to say as to whether or not that would be satisfactory?

A. They were satisfied also.

Mr. Smith: I object, your Honor, and ask that be stricken.

The Court: Yes, strike it out.

Q. Or, what did they say?

A. They said they were perfectly satisfied to stay and hold everything together and work in partners with my father and have their names go in with the property.

Q. Who was the youngest member of the family?

A. My brother, Charles.

Q. How old was he at that time?

A. I think he was about seven.

Q. In 1901 and along about 1915 he would be twenty-one.

years of age?

A. Yes, sir.

Q. When did your father die?

A. In the year 1926.

Q. Do you remember the month?

A. May 5, 1926.

Q. Now, between the year 1915 and 1926 when your father died, state whether or not this matter was discussed among the family?

A. Well, Father mentioned—

Q. No, please answer whether or not it was discussed, talked about.

A. Yes, sir.

Q. What was the substance of the conversation, of the discussion, between your parents and yourself or any of the other children in your presence?

Mr. Smith: Just a minute. I will ask first you get the information about where the conversation was held, who was present, and so forth.

Mr. Lorenzo: All right.

Q. You say that this matter was talked about between 1915 and 1926; you have stated that it was talked about, haven't you?

A Yes, sir.

Q. Where?

A. Well, it was generally always spoken of in our home.

Q. And on any one occasion that you remember, who was present?

A. Well, my father generally discussed it between the family when we were all together—my mother and my brothers.

Q. At any of the conversations when this matter was talked about, was any one of the children absent, that you remember?

A. No, not that I remember.

Q. State whether or not it is your best recollection now that when the matter was talked about that all the children were present?

A. Yes, sir.

Q. And you say it was in the home?

A. Yes, sir.

Q. What was the substance of the discussion that came up from time to time?

Mr. Smith: I will object to that, unless there is a proper foundation laid—the time and place of it, and who was present. That is not competent unless she fixes the time and place and who was present.

The Court: She may answer.

Mr. Smith: I will also object on the further ground that it is incompetent, irrelevant and immaterial, as tending to vary the time and place, attempting to create an interest in lands under parol testimony, and for the other objection I just mentioned.

The Court: This is all received subject to your objection, all of this line of evidence.

Mr. Smith: Then I will make no more objections.

The Court: Go ahead.

Q. (By Mr. Lorenzo) Will you please state, as near as you can remember, the substance of the talk that went on at your home on any occasion between 1915 and 1926, with respect to this real estate arrangement?

A. Well, generally, when Father was going to buy a piece of property he would speak of it and discuss it with Mother and my brothers and talk with myself in the evenings when we were sitting together, and he would say, "I will take it in my name or Mother's name. It's more convenient, and later on when you are older I'll put the names all together on the property as we agreed upon."

Q. What did you do towards carrying out your part of the agreement that was made in 1901?

A. Well, I did a little of everything—part of the home work, and work that my father asked me to do, to go out and take care of some of the tenants for him, and if there had to be matters tended to from time to time he would send me on them, and I was helpful as much as I could.

Q. Did you have anything to do with keeping the records and books and write letters?

A. Yes, I kept some of them.

Q. And as to the other children, state what they did and for what length of time.

A. Well, my sisters did practically the same as I did, and my brothers worked with my father—any work that the property required.

Q. How long did your brothers continue to carry out that plan?

Mr. Smith: I will object to that, Your Honor. This witness is not competent to testify as to her brothers.

The Court: Objection sustained, as to that form.

Q. (By Mr. Lorenzo) Do you know how long John worked with the properties, or in connection with the properties?

Mr. Smith: I will object to that, your Honor, as being incompetent, irrelevant and immaterial. She is not competent to testify to that. It isn't the best evidence.

The Court: If she knows.

A. Ever since I know, he has been able to work with the family, from little on. We have all done the same, at present, today.

Q. How long did he continue, if you know? First, do you know how long John continued to do the work?

A. Well, we—

Mr. Smith: Your Honor, I object to it. John can speak for himself as to what he did. This witness is not competent to testify what John did.

The Court: The difficulty is, it is so general and vague and indefinite that it isn't of any value to the Court.

Mr. Lorenzo: It is offered, your Honor, I might explain—

The Court: You don't need to explain it. That is obvious. "How long did John continue to work?" That doesn't mean anything. What did he do?

Q. (By Mr. Lorenzo) Do you know how long John was identified with the—

The Court: Objection sustained.

Q. What did John do in connection with the properties?

A. Well, he would take charge of renting, getting tenants, and taking care—if there was tenants had to be put out, or collecting rents, and so forth, he would go out and do that, and in general whatever he could do for the business, he did.

Q. For how many years did he do that?

A. Well, he did that—well, I know right after we were out of the grocery business—he worked in the grocery business with Father—and after the grocery business he went into the real estate and building with my father, the same as all the rest of the boys.

Q. How long did he continue to do that?

A. From the time we went out of the grocery store, up to the present time.

Q. And do you know how long Fred worked in connection with the properties?

A. Fred did the same.

Q. The same periods of time?

A. Yes, sir.

Q. As to your brother, Rheine?

A. The same, ever since he has been able to work.

Q. Do you know what this paper, Exhibit A, is?

A. Yes, sir.

Q. Have you seen it before?

A. Yes, sir.

Q. It has been identified here as being a deed that your mother made of these properties.

A. Yes, sir.

Q. The stipulation refers to six pieces of property as being under land contract at the time of your father's death in May 1926. Have you examined this stipulation, and have you familiarized yourself with the parcels that represents?

A. Yes, sir.

Q. Have you made a memo?

A. Yes, I have.

Q. Of the land contract properties that still are in this group?

A. Yes, sir.

Q. The first one that is mentioned here is 2A.

Mr. Smith: Your Honor, I am going to object to any testimony tending to vary the terms of the stipulation. The stipulation was entered into after full investigation and knowledge on the part of other officers for the Federal Government and Treasury Department. Now he is going to controvert that entirely, and I shall object to any evidence that controverts the facts agreed to in the stipulation.

The Court: Are you proposing to make any change?

Mr. Lorenzo: No, your Honor.

The Court: You are not running counter to the stipulated facts?

Mr. Lorenzo: There is nothing counter to what is in this stipulation. It is only an explanation of that.

The Court: Well, that is all right. This is all subject to the same objection. It all goes to the very meat of it, as to whether or not this sort of an arrangement can be created in the manner in which it was created, and also as to whether or not it will run against the tax.

Mr. Smith: Correct.

The Court: Go ahead.

Q. (By Mr. Lorenzo) Parcel 2A, Miss Paul, is 412-14 Elizabeth Street. It is identified as being that property.

A. Yes, sir.

Q. What was the purchase price of that property, the original purchase price, under the land contract?

A. Thirteen thousand dollars.

Mr. Smith: I will object, as incompetent, irrelevant, and immaterial. It has nothing to do with the issues in this case.

The Court: What do you claim to this?

Mr. Lorenzo: The interest of the deceased, your Honor, at the time of his death, would be, I believe, the limit that the tax could apply on, so that if at the time of the death of the deceased there was an unpaid balance on the contract, and we paid off the balance of the contract, we have an equity, and that, I think, should protect it.

The Court: Don't the stipulated facts take care of that? In other words, I am assuming from what Counsel said, that at the time of the death, when the taxes came due, that the decedant only had an interest as a vendee in the land contract, or a vendor?

Mr. Lorenzo: Vendee.

The Court: Vendee, and then subsequently thereto these children paid up the balance due on the contract. Of course, it would only apply to the decedant's interest, wouldn't it?

Mr. Smith: The Government doesn't claim, your Honor, that they have an lien against any interest other than deceased's legal interests as of that time.

The Court: He wants to show the interest of the decedant at the time of his death. Have you agreed on the amount due? He purchased it for how much on contract?

Mr. Lorenzo: $32,500.00.

The Court: And how much had he paid down?

Mr. Lorenzo: At the time of his death there was a balance of $17,500.

The Court: Just about half—over half. Isn't that sufficient?

Mr. Lorenzo: There are four of the parcels that are enumerated in the stipulation that we have the figure for.

The Court: If this claim can be maintained against this tax, or if this claim can be maintained against the estate by the Government, why it only applies to the decedant's interest in that particular property.

Mr. Smith: That is correct.

The Court: Then let it stand then. These are all under land contracts?

Mr. Lorenzo: Yes.

The Court: All right, identify it. Where is it? Just give me the street, wherever it is.

Mr. Lorenzo: 2A is 412-14 Elizabeth Street.

The Court: Now give us another.

Mr. Lorenzo: Parcel 21 is 2018-2022 Beaubien Street.

What was the purchase price of that under the land contract?

A. Eighty-five hundred dollars.

Mr. Smith: Let me object to that as not being the best evidence. If there is going to be any theory, then it is the contract. We've got no way to meet him when he comes in here on a situation like this and says so much is due.

The Court: He has the contract right there.

Mr. Smith: If she is going to claim an interest she has got to show how much she paid.

The Court: They are entitled to know what this Government has claimed. The Government made a claim against him, and when he paid that he didn't have much of an interest in any of that property.

Mr. Smith: Certainly, he can show that by the stipulated facts, that entire stipulation.

The Court: When are they going to prove his interest?

Mr. Smith: Whose?

The Court: The decedant's interest in this estate.

Mr. Smith: That is covered by the stipulation.

The Court: Does it say in the amount?

Mr. Smith: It says he owned and held.

The Court: Give me an illustration of what the facts show.

Mr. Smith: "That at the time of death, John P. Paul, together with his wife, Lena Paul, owned and held land contract", covered by 235 and 36, as admitted in the Bill of Complaint.

The Court: Does that show what the decedant's interest was in the property?

Mr. Smith: Your Honor, a vendee of the land contract—

The Court: There is no question about that.

Mr. Smith: He has a legal title to it.

The Court: What does the Government base its tax on?

Mr. Smith: We are not basing it on the valuation, we are basing it on the property as a whole.

The Court: You must have some valuation upon which you can base a tax.

Mr. Smith: In this lawsuit, the value is not in dispute.

The Court: I want to know how you base the tax on that property.

Mr. Smith: On the appraised value of the estate at the time of his death, the entire estate.

The Court: That is, his interest in that piece of property?

Mr. Smith: Yes, but we can't appraise each one of these parcels at one time. The government appraises that estate as a whole, and on that they fix a tax, and there is nothing in this lawsuit to dispute the amount of the tax.

The Court: In other words, you claim that it absolutely makes no difference as to the amount at all?

Mr. Smith: Not in this lawsuit.

The Court: You can't arbitrarily assess a tax against a man's estate, if he has a land contract on the property worth

thirty thousand dollars and he has only paid a thousand dollars down on it.

Mr. Smith: I agree, your Honor. We have got to fix a tax based upon valuation, under the Statute.

The Court: Who fixed the value?

Mr. Smith: The Commissioner of Internal Revenue.

The Court: Has he fixed a valid appraisal there?

Mr. Smith: Yes, and the taxes levied there. There is nothing in this lawsuit about the amount of the taxes.

Mr. Lorenzo: All the Tax Board did, they fixed the gross amount of the tax. Now, in following up their attempt to collect the taxes they placed liens against each parcel. Their lien necessarily must be limited to the amount of the interest of the taxpayers.

The Court: I know, but the difficulty is, they are bringing foreclosures now.

Mr. Smith: That is right. Your lawsuit to find out how much they owed the Government has been tried.

Mr. Lorenzo: We don't dispute the amount of the tax.

The Court: There is no dispute in the amount then. You had better leave this out. There is no dispute of the amount at all, so just leave this out. You are raising the legal question here, as I understand this thing—this thing has been running here for a year or two—you are making the claim here that there is no tax which can legally be levied against this estate because of the fact that there was an arrangement between this old gentleman and his children by which they sought to create a sort of a partnership arrangement, a community interest, whereby they were all in together over all this real estate. They were all joint owners, and that in pursuance to that arrangement it was understood that title would be in the old gentleman and his wife's name, according to your claim, and that ultimately, sometime, it would be fixed in the names of all the parties. Now, the question arises as to whether or not that can be done legally, and the effect of

that evidence is sufficient to create a trust estate, or to create an estate held jointly by all of these parties and a defense against the claim of the Government in undertaking to assert its lien upon this property. That is all you have got here.

Mr. Lorenzo: Yes, and as to these four parcels, your Honor, I think we stand in the same position.

The Court: That doesn't make any difference. It applies to all the property.

Mr. Lorenzo: We paid the balance of the contracts. We don't attack the amount of the tax.

The Court: Who do you mean?

Mr. Lorenzo: These children.

The Court: If you are going in the appraisal made by the Government, I assume there is an itemized appraisal here in this lawsuit?

Mr. Smith: Not in this lawsuit, your Honor.

The Court: Is there an itemized claim as to the tax levied?

Mr. Smith: There was one tax levied against the estate of John P. Paul.

The Court: Do you mean the Internal Revenue Commissioner simply says, one thousand dollars for tax on this or that, and the tax as to this particular property would be so much and as to this it would be so much, and the sum total is so much. Is that the way it was arranged?

Mr. Smith: No, the deceased files a return, listing all of the assets of the estate of John P. Paul. These properties were not listed. The Commissioner then comes out and makes an investigation or audit of the estate tax return. Now, after he makes an audit then he finds these numbers of parcels or real property held by John P. Paul and Lena Paul, his wife, that the Supreme Court has held should be included in the gross estate. Now, a value is fixed upon all the property, then it is added up to its total sum. It is about forty-one thousand dollars, I think, at the present time.

Mr. Lorenzo: That is the balance. We paid $3450.00.

The Court: What do you claim is the approximate value of the estate here?

Mr. Smith: I haven't got those figures. Three or four hundred thousand dollars.

The Court: And the tax, you say, was around forty-three thousand dollars now?

Mr. Smith: I think thirty-four was the assessed deficiency.

Mr. Lorenzo: Twenty-three thousand some dollars, and the balance and penalties and interest. It brings it up to about forty-two thousand dollars.

Mr. Lorenzo: Objection was made this morning to my pursuing this land contract situation. What may I do, your Honor? I desire to go on with the contract to show the balance as of the date of the deceased's death.

The Court: Well, if what the Government states is true, there might be some doubt as to whether you could show what the tax should be.

Mr. Lorenzo: I am not attacking the amount of the tax, your Honor, merely as a mortgagee would show the amount of the mortgagee's claim. I feel that we would be forced into the position that the vendor might take if he were here.

The Court: Unless you stipulate upon the record that he is interested, these several properties that you have mentioned, six of them, are the interests of the vendees or vendee in the land contract.

Mr. Lorenzo: As of the date of the death of the ancestor we feel, your Honor, that after the death of the ancestor, the children having paid the balance in the contract, that that equity created should be entitled to assert the same claim that the vendor might assert.

The Court: That is a different matter. I don't know about that. In case you stipulate what interest he has in those six contracts, what the base of the contract was and how much

was paid upon it, I don't think the Government would challenge that.

Mr. Lorenzo: Can we do that?

Mr. Smith: I would have no authority to stipulate in open Court now. If it is important, we could have officers of the Government go out and investigate.

The Court: Identify the property, the amount of the contract, who the vendee is, and the amount paid so that will show what the interest is.

Mr. Smith: Let me get my objection on the record, your Honor. I will object to that on the ground as immaterial what the vendee's interest was or is at the present time. The interest that the Government has is the lien upon whatever interest the estate had at the time of the death of the deceased. Now, if there had been a mortgage on there that was prior to the Government's claim, if that mortgage was subsequently paid, then the whole property becomes subject to the Government's lien. In other words, this is no different than a mortgage, if a mortgage was on the property.

The Court: Their theory is that they had an agreement which they claim was made between the father and mother and all the children in which they claim an interest in this property, and assuming that, they claim their interest is prior to, or it doesn't apply to the old estate—only the interest they had in the joint estate held by their agreement. I am allowing him to make his record.

Mr. Smith: Yes.

NETTIE PAUL, having been previously sworn, resumed the stand, was examined and testified further as follows:

Direct Examination

By Mr. Lorenzo: (Continued)

Q. Parcel 21 is 2018-2022 Beabien, Mrs. Paul. What was the purchase price of that property?

Mr. Smith: I will object to that, your Honor. The contract speaks for itself on that.

The Court: Yes.

Q. Have you the contract? That has been marked Exhibit C.

The Court: You may read the contract, the amount to be paid, the purchase price, and the amount that was paid on it.

Mr. Lorenzo: I offer Exhibit C in evidence.

Mr. Smith: I will object to it, your Honor, as being incompetent, irrelevant and immaterial, having nothing to do with the issues of this lawsuit.

The Court: It may be received for the purpose of showing the consideration of the contract and the amount paid down.

(Thereupon, the document previously marked Exhibit C was received in evidence.)

Mr. Lorenzo: The purchase price is mentioned as $8,500.00. That is dated July 14, 1914.

The Court: How much was paid down on the contract?

Mr. Lorenzo: The balance due on January 14, 1926 was $2,750.00.

The Court: What was the date of his death?

Mr. Lorenzo: May 5, 1926.

The Court: All right.

Q. (By Mr. Lorenzo) The next payment after January 1926 was July 14, 1926, Parcel 25 is 1336 Alfred. Have you the land contract?

A. Yes, sir.

Mr. Lorenzo: Here we have a series of records of payments, your Honor. The contract itself is not here.

Q. Have you looked for that contract?

A. Yes, I have.

Q. Do you know what has become of it?

A. No, I don't.

Q. Do you know what the purchase price was, from your recollection?

A. Five thousand dollars.

Q. And have you a record of what the balance due was on the contract as of May—

Mr. Smith: I will object to that testimony, your Honor, as being incompetent, irrelevant and immaterial and not the best evidence, as not having anything to do with the issues in this lawsuit. It can't affect the tax involved; not properly identified.

The Court: Who is in possession of the property?

Q. (By Mr. Lorenzo) Who is in possession of that property now, at 1336 Alfred?

A. My brother has been.

Q. You children?

A. Yes, sir.

Q. What was the balance due on that contract on the date that your father died?

A. $1726.96.

Mr. Smith: I will object to that on the same ground.

The Court: Subject to your objection; go ahead.

A. $1726.966.

Q. (By Mr. Lorenzo) The next parcel is No. 36, that is 1343-48 Cherry.

A. That was $7,500.00.

Q. No. Have you the contract?

A. Yes, sir.

(Thereupon, a document was marked Defendant's Exhibit D by the reporter.)

Q. Is Exhibit D the contract covering the Cherry Street property?

A. Yes, sir.

Mr. Lorenzo: I offer Exhibit D.

Mr. Smith: I will object to this, your Honor, as being incompetent, irrelevant and immaterial, having nothing to do with any of the issues of this particular lawsuit, as not being properly identified, as not being the best evidence.

The Court: Is that a contract?

Mr. Smith: Yes, sir.

The Court: Executed by the parties?

Mr. Smith: Not by this party, no, sir. It is a contract.

The Court: You made an objection as not being the best evidence.

Mr. Smith: Yes. This is not the best evidence as to how much was paid on the contract at the time. She is not the party to make that.

The Court: What does the record show on the contract?

Mr. Smith: This contract is signed, "Mary E. Brainard, and John D. Albert." It isn't between any of the parties in this lawsuit.

The Court: Has it been assigned?

Mr. Smith: I don't see any.

Mr. Lorenzo: That is the assignment there.

Mr. Smith: There seems to be an assignment attached to it. There is an assignment dated November 28, 1923, Union Trust Company as Administrator of the Estate of J. A. Albert to John P. Paul and Lena P. Paul, purported to be signed by Union Guardian Trust Company. There has been no identification of signatures on that instrument in any way.

The Court: She may state the amount of it and the amount of the interest as of the date of his death.

Q. (By Mr. Lorenzo) What is the purchase price of this property?

A. $7,500.00.

Q. And on the date of your father's death, what was the balance due on that contract?

A. $1,900.00.

Q. Is there any difference in the amount of the purchase price that is due as of this date?

A. No, sir.

Q. That still remains unpaid, the same amount?

A. Yes, sir.

Q. Did you know an attorney by the name of E. A. Fink?

A. Yes, sir.

Q. With reference to the time of the death of your mother in February 1931, state whether or not you were at Mr. Fink's office with anyone?

A. Yes, sir.

Q. Prior to that?

A. Yes, sir.

Q. And with whom?

A. My mother.

Q. And when, prior to February 1931?

A. That was in the latter part of the summer of 1930.

Q. State whether or not you knew the purpose for which your mother went to Mr. Fink's office?

Mr. Smith: I will object to that, your Honor, as to what her mother's purpose was, incompetent, irrelevant and immaterial.

Q. From anything that your mother said.

The Court: Is that the day she executed that?

Mr. Lorenzo: No, that was the occasion in the summer of 1930, some several months before she died, along the same lines that the other children testified to, that the attorney was instructed to prepare a deed, which was finally done in February.

The Court: What is the purpose of this interview then? To show what her mother said?

Mr. Lorenzo: Yes, the reason that this deed was arranged for in the summer of 1930 and repeated again in February of 1931.

The Court: All right, go ahead.

Mr. Smith: Your Honor, I will object to that. I submit no statement of any kind can have any bearing whatsoever on the issues of this lawsuit. It is the right of the Government under the statute—

The Court: I don't disagree with you, but I will allow it on this record.

Q. (By Mr. Lorenzo) What transpired at Mr. Fink's office in your presence, with reference to these properties?

A. Why, my mother asked Mr. Fink if he would draw up a deed for her and convey it so that she could have all the childrens' names placed in this deed with hers, as it was her wish, and my father had made that agreement years before, and it had never been carried out and she wanted to do it at that time.

Q. When was the next time after that that you saw Mr. Fink?

A. Mr. Fink had taken sick in the meantime and hadn't done anything about it, and I think it was along in the first part of February of 1931 he called at the home to ask mother if she had any of that matter taken care of about having the papers made out, and she said no, and she asked him if he would do it, and he said yes, he would prepare the papers or draw them up.

Q. Do you know whether or not he did prepare the paper?

A. Yes, he did.

Q. Did he come back to your home then?

A. Yes, sir.

Q. This Exhibit A, which has been identified as the deed of Mr. Fink prepared, were you present when Mr. Fink brought the deed to the house?

A. Yes, sir.

Q. Is that the paper? Is that the deed?

A. Yes, sir.

Q. And were you there when it was executed by your mother?

A. Yes, sir.

Q. What was the general condition of your mother's health in the summer of 1930?

Mr. Smith: I object to that, your Honor, as being incompetent, irrelevant, and immaterial, having nothing to do with this lawsuit. She is not qualified as an expert.

The Court: Objection sustained.

Q. What was your mother's general condition of health when Mr. Fink came to your house in the early part of February 1931?

A. She was well.

Mr. Smith: Same objection.

The Court: Is that the day it was executed?

Mr. Lorenzo: A few days before.

The Court: Same ruling; objection sustained.

Q. What was the condition of your mother's health on the 13th of February, 1931, when she signed this deed?

A. She was well.

Mr. Smith: Same objection.

The Court: The answer may stand.

Q. How long was your mother ill before her death?

A. About three days.

Mr. Smith: I will object to this, your Honor. This has nothing to do with the issues in this lawsuit.

The Court: What do you claim for this?

Mr. Lorenzo: To show, your Honor, that it wasn't in contemplation of death but to bear on the claim that we made.

The Court: How long was this deed executed before her death?

Mr. Lorenzo: Five days.

The Court: Is that it?

The Witness: Yes, sir.

The Court: She died five days after she executed this deed?

A. Yes, sir.

Mr. Smith: Did your Honor sustain my objection?

The Court: I will allow this to stand, the date of her death.

Mr. Smith: I mean so far as the condition of her mother's health. She didn't examine her mother, she didn't know whether she was suffering from heart trouble or anything else.

The Court: We will just simply say it doesn't make any difference. Go ahead.

Q. (By Mr. Lorenzo) What, so far as you are aware, did your mother die of?

Mr. Smith: I object to that—

A. Pneumonia.

Mr. Smith: —incompetent, irrelevant, and immaterial, hearsay testimony.

Mr. Lorenzo: Of course, it isn't an issue in the case.

The Court: Then leave it out. Go ahead, put another question.

Q. (By Mr. Lorenzo) Where did your mother go a day or two after this deed was signed, this Exhibit A?

A. She went to the Shriner's Circus.

Mr. Smith: I object to that. Same objection.

Q. After she had attended the Shrine Circus, what appeared to be her condition of health?

Mr. Smith: I object to that, your Honor.

The Court: Objection sustained.

Mr. Lorenzo: Take the witness.

Mr. Smith: I want the record to show I am not waiving any of my objections or reservations by cross examination.

Cross Examination

By Mr. Smith:

Q. Miss Paul, where was this conversation in 1901 held?

A. At our home.

Q. And who was present?

A. The family, my brothers and sisters and my father.

Q. Will you give me the names and the ages of your brothers and sisters who were present at that conversation?

A. The youngest was seven, Charles.

Q. Who was that?

A. Charles.

Q. Charles was seven.

A. Amelia was about eleven or twelve, and Riney was about fourteen and I was about sixteen.

Q. Your name is Nettie?

A. Yes, sir.

Q. Sixteen.

A. And my brother, Fred, I think he was about eighteen.

Q. Fred was eighteen?

A. Yes, sir. And John was about twenty.

Q. John was twenty.

A. Twenty, I believe.

Q. So all six children were under twenty-one years of age at the time of this conversation in 1901?

A. Yes, sir.

Q. And this is the contract under which you are claiming you got an interest in property at that time?

A. Yes, sir.

Q. Now, tell me what was said at that conversation at that time? First, how did you happen to be together?

A. Well, just—we were always working together.

Q. Just casual, all together in the evening. Your father didn't call a special conference or anything?

A. No. The question came up—we had just recently sold out the grocery store, and some of my brothers were going

away, and I was there myself, and father said if they would all remain together he would make them as a partner with the entire property.

Q. He would make them a partner?

A. We would all be together and share equal with him when the youngest one became of age.

Q. Why then he would make them all partners?

A. Yes, sir, and have their name added to the partners.

Q. More or less of a promise from him that that is what he would do if you remained together?

A. Yes, sir.

Q. How many of the boys worked in the grocery store at that time?

A. The two oldest ones.

Q. Fred and John had been working in the grocery store?

A. Yes, sir.

Q. None of the rest of you had been working in the grocery store?

A. Yes, sir, I did, and Brother Riney did.

Q. So you were all more or less out of jobs and the conversation came up as to whether you would get a job some place else, is that right?

A. Yes, sir.

Q. And your father wanted the family to stay together?

A. Yes, sir.

Q. He said, "We will all stay together, and one of these days, after you become twenty-one or more we will all become partners"?

A. Yes, sir.

Q. Now, what did Charles, who was seven years old, say to that?

A. I don't remember.

Q. As a matter of fact, he didn't even comprehend what was going on, at seven years of age?

A. No.

Q. And Amelia was eleven years of age—she didn't know much more. Anything her father said to her was law, wasn't it?

A. Well, we all knew what he said, he would do, or whatever he promised us he would do.

Q. And whatever he said, why of course, being a minor and still subject to his control and jurisdiction you would have done anyway, you didn't have any alternative at that time, did you?

A. In what way?

Q. Well, you didn't want to leave home. You were only sixteen. If he wanted you to stay with the family, that is what you would do?

A. If there was something better for us to do, we could have done that. He left it up to each one of us. We were perfectly willing to stay with him. The property was ours at that time as well as his, only it was more convenient to have it in his and mother's name.

Q. At the time you were sixteen years old you had no plans of leaving home and getting a job, did you?

A. Well, I worked very hard.

Q. At that time, in 1901, when you were sixteen you had no plans of going out and getting a job, did you?

A. I could have at that time.

Q. Did you have any plans to do that at that time?

A. Well, I had been working up to the present time and I was waiting at that time.

Q. When you were sixteen years old in 1901, did you have any plans for going out and getting a job, or leaving home?

A. Yes, I had then.

Q. Did you have any plans to go, to leave home?

A. No, not at that definite time. I was willing to do all I had to do at home first if there was something for me to do, and if there wasn't, I was willing to go out and take any job.

Q. But you had no plans on going out, leaving home? Nobody had offered you a job some place else?

A. I had no offers.

Q. Did your father say what would happen in case five or six or ten years from then one of the family decided to go out and get a job some place else?

A. No, sir.

Q. Nothing was said about it?

A. No, sir.

Q. That contingency wasn't provided for at that time?

A. We were under the impression that we were—

Q. I don't want your impression—I want what was said. Did your father say at that time what would happen in case one of the boys decided he wanted to get a job?

A. No.

Q. Did your father say whether all of the children would share equally in case one of the boys decided to take a job with an outside party and leave the family circle? Did he say anything about that?

A. Yes, sir. He said it would all remain in the children's name.

Q. Did he say that because the family were all working and staying together, or would that be true regardless of any further contingency?

A. Well, he knew that we would all stay together.

Q. No, I want what he said—not what he knew. Did your father say at that time whether or not one of the boys would still share equally with the other boys even though he left the family fold and went out and got a job with someone else?

A. No.

Q. He didn't say that?

A. No.

Q. And was this contingency spoken of? Suppose John or Fred had continued to work for the next twenty years with your father, helping him build up his estate, and assuming

Rheine got a job working for, say, the General Motors Corporation, and they agreed to pay him a thousand dollars a month for his work, did your father say whether or not Rheine would share equally with Fred and John in that case that contingency happened?

A. He didn't mention it, but we knew he would.

Q. Well, you didn't know what was in his mind. I am just asking what he said. I ask that be stricken as not being responsive. Was that contingency spoken of at that meeting?

A. There was nothing said about the children leaving.

Q. But you think yourself if Rheine had gone and got a job with General Motors he would have shared equally?

A. Yes.

Q. And suppose Charles had gone out with, say, Chrysler Corporation and gotten a job, would he have shared equally with Fred and John?

A. Yes, sir.

Q. So all the children were going to share equally, regardless of what they did?

A. Yes, sir.

Q. And even though they didn't continue to work with your father, they were still going to share equally?

A. Because they all had started to work with him.

Q. When they got to be twenty-one then he would transfer the property to them?

A. He would at that time place the names on the property with he and my mother.

Q. Now, was any agreement ever in writing executed by your father whereby he transferred any interest in this property to any of the children?

A. No.

Q. Never did. Now, how old was Charles at the time of your father's death?

A. I think Charles was seven—no, at Father's death, he was, I think twenty-six.

Q. He was the youngest one, Charles?

A. Yes, sir.

Q. So five years had elapsed since the youngest had reached the age of twenty-one and still he hadn't placed this property in the names of the children?

A. No, sir.

Q. Altogether, twenty-five years had elapsed between 1901 and the date of his death and he had made no effort whatever to transfer any of this property into the children's name?

A. No, but he spoke of it many times.

Q. But he never did anything about it. He always kept it in his name and in his wife's?

A. He always said it was more convenient.

Q. Just answer the question please. He always said it was more convenient to keep it in the name of his wife after 1901?

A. Yes, sir.

Q. And that is the date by which you allege the contract was created by which you got an interest in the property?

A. Yes, sir.

Q. Do you know how much property your father had at that time?

A. In 1901 I think he had about five or six pieces.

Mr. Smith: I think that is all.

Redirect Examination

By Mr. Lorenzo:

Q. How many were there when he died?

A. Between seventy and eighty.

Mr. Lorenzo: That is all.

(Witness excused.)

Mr. Smith: Your Honor, I would like for the record to show that the substance of this witness' testimony which the stenographer took down in the record was in substance and effect a corroboration of the testimony given by the three previous witnesses. That is a true statement?

Mr. Lorenzo: Yes.

Mr. Smith: So the general effect of the conversation was all the same.

Mr. Lorenzo: Yes.

Mr. Smith: Now, I make a motion to strike the testimony of all the witnesses and all the exhibits as being incompetent, irrelevant, and immaterial, as having nothing to do with the issues in this suit, as being an attempt to create an interest in lands by oral testimony, contrary to the Statute of the State of Michigan.

The Court: I suppose counsel will want to file a brief on this situation.

Mr. Smith: The difficulty is this, your Honor. We have filed our brief. This all has arisen since the Government has filed the brief, and I would like to have my motion on the record to strike all this testimony on the ground it attempts to create an interest in lands by parol testimony as against the Statute of the State of Michigan, the Statute of Frauds, as having no effect whatever upon the Government's tax lien, and having nothing to do with the issues presented by the pleadings in the cause.

The Court: Did the bank want to be heard?

Mr. Smith: The bank secured permission for thirty days to file findings and conclusions of law, which your Honor granted them.

The Court: How much time do you want to file a brief?

Mr. Lorenzo: About thirty days, your Honor. That would be about the time the bank has asked—maybe a few days more.

The Court: They are filing proposed findings of fact. Well, all right.

Mr. Smith: Your Honor, we have filed our brief. We were given thirty days in which to file a brief. We have received a brief from the City of Detroit Bank, from the County of Wayne, and one other. May I have the record show that these other three witness' testimony, which is substantially the same as this, is only corroborative, and that we at that time, when the record wasn't made, made the same objection to the testimony as we made to this at the time.

(Whereupon, this hearing was adjourned.)

I HEREBY CERTIFY that the foregoing was taken down by me in shorthand at the time and place hereinbefore set forth, and thereafter reduced to transcript form, and that the foregoing is a true, full and correct transcript thereof.

R. FOREST BRENNER

PROCEEDINGS ON MOTION TO SETTLE A DECREE, heard before The Honorable Edward J. Moinet, United States District Court Judge, December 9, 1940, commencing at about the hour of 10:00 o'clock A.M.

APPEARANCES:

APPEARANCES:

Mr. Carl Marold, United States Attorney;

Mr. Charles Lorenzo, Attorney for the Defendants, John W. Paul, Frederick P. Paul, Ruby H. Paul, Nettie B. Paul, Riney T. Paul, and Amelia L. Paul;

Mr. Edward Reid, Attorney for the Detroit Bank, Defendant.

Mr. Marold: Your Honor, this comes up upon motion to settle a decree.

As you will recall, this is a matter wherein the Government is foreclosing a lien for estate taxes, against the estate of John P. Paul, who died in 1926. It was submitted on stipulation some time ago, and last August, your Honor decided the case and entered findings of fact and conclusions of law and directed us to enter a decree in accordance with the motion for the settlement of the decree.

The Court: Whom do you represent?

Mr. Marold: The United States, your Honor.

The Court: Your name?

Mr. Marold: Carl Marold, The United States Attorney is the attorney of record. I am appearing for him.

As you will recall, your Honor, the Court decided in this case that the Government lien for estate taxes arose in May of 1926, on the date of the death of the decedent, and it was therefore superior to the lien of certain mortgages that were put on the property after the date of his death, and also superior to the lien of the State and County and the City for real estate taxes, which arose after the date of the death, and you held that the Federal lien was inferior to the lien of certain

mortgages that were executed on some of this property prior to the date of the decedent's death.

Now, you ordered, or suggested that a sale should be held, that those parcels that the Government had prior lien upon, providing that the assets should be marshalled, so that the clear properties, those not mortgaged, should be sold first, and only if they were not enough to satisfy the Government's lien, and then that we should resort to the mortgaged property.

Now, before I present that decree, there are two or three small errors that arose, that I should like to have straightened out. They were incorporated in our stipulation, and in the Complaint, and hence found their way into the findings of fact.

First, in Parcel No. 5, which was described in the complaint —we described that parcel as Lot No. 67 to 69 inclusive, of Williams Subdivision. It has been called to my attention that Lot No. 69 of those three that we named there, was not a part of the estate of John P. Paul, but was owned by his daughter, Nettie Paul, and had been owned by her for some time, and we therefore, erroneously included that.

I have a stipulation signed by the attorneys for the Pauls and by the United States Attorney setting up that the parcel was wrongfully included when we stated that it was a part of Parcel 5, and ask the Court to have, or find that it was owned by Nettie Paul, and not by the decedent, John P. Paul, and that the United States has no lien upon the property, and an order in accordance with that stipulation.

The Court: Any objection to this on the part of the other attorneys here, or don't you know anything about it?

Mr. Reid: No objection, your Honor.

Mr. Marold: The next thing that calls for a correction here, your Honor—though I do not think it should be the subject of an order—it was a typographical error which appeared in our stipulation, and has also found its way into the findings of fact, where we stipulated that as certain parcels were free and clear of certain mortgages, and that others were subject

to certain mortgages, and we stipulated that Parcel No. 24 was clear, and the Court so found. When we stated about those under the mortgage, when we got to Parcel No. 34, it was mistakenly written into the record as No. 24. It is, however, Parcel No. 34 that is subject to mortgage, which mortgage, incidentally, was ahead of the Government, since it was prior to the time of the death, and I don't believe that the attorney, Mr. Wendell Brown—I called him about it and he said to make the change, but he couldn't be here with us this morning, and if that could be made without an order, he would like to have the findings and the stipulation changed to write in the number "4" instead of the number "3" there.

The Court: What paragraph should that appear in, in the findings?

Mr. Marold: That appears in the findings on Page No. 7.

The Court: Parcel No. 23 should be changed to Parcel No. 24?

Mr. Marold: On Page 7, where we have Parcel No. 29, of the findings of fact. The next one says, "No. 24."

The Court: Yes?

Mr. Marold: That should read "34," and it appears right from the findings themselves, because back on Page No. 5, Paragraph 19, we have already found that Parcel No. 24 was unincumbered, and then over in the conclusions of law, which appears on Page 13, Paragraph 8—

The Court: Paragraph 8 on Page 18?

Mr. Marold: Yes, of the findings. Do you have the findings there, your Honor?

The Court: Yes.

Mr. Marold: The findings state that the lien of the plaintiff, United States of America, is inferior and subordinate to mortgages on Parcels Nos. 9, 18, 19.

The Court: I have the conclusions of law on Page No. 13 and there is no,—

Mr. Marold: It is possible that my copy here doesn't ex-

actly jibe with that one that you have. The conclusions of law started on page,—

The Court: Thirteen.

Mr. Marold: Oh, do they? This is No. 12 here. Well, it is conclusion No. 8, as numbered here. Perhaps that will lead you to it.

The Court: Lien of the plaintiff, United States of America, inferior and subordinate mortgages on Parcels Nos. 9, 18, 19, 23, 24?

Mr. Marold: Yes; that 24 should be 34, and that, I think, takes care of the errors that we made when we were stipulating this case.

Now, for the decree; this was originally set, Your Honor, for October 18th, and copies of the decree were served on all of the parties, but it was put over at the request of one of the attorneys until today, and I have made one or two small changes in the decree since we have served those copies.

Those changes are to correct the errors that we have discovered in the findings and on Page 1, as stated, that the United States has a lien on all property except Parcel No. 50 and Lot No. 69.

The Parcel No. 50 was taken out of the case by stipulation of the parties. It turned out that the mortgagee on that property had foreclosed the property before we filed this suit.

The United States had been made a party, but they hadn't set up this claim, and the Wayne County Courts had decided we were out of it, and it was to become final, and your Honor entered an order on December 15th to do so.

The Court: And you want this stricken out of the decree?

Mr. Marold: No, your Honor, I am only explaining that for the purpose of the other gentlemen here who have copies of the decree and had them before the change was made.

Now, the decree—does your Honor care to read that?

The Court: Call my attention to the points that are here.

Mr. Marold: In the first place, the decree sets up prac-

tically what is in your conclusions of law—that the United States has—that there is due from the estate of John P. Paul the sum of $47,313.78. That is with interest figured to date. And that, that lien is on all of the property except those named; that it became effective on May 5th, 1926, and that it is prior and superior to the liens of the State and City and County for real estate taxes on the parcels—I mean, those prior to the liens of mortgages, One, Two, Four, Seven, Eight, Ten, Eleven, Thirty-two, Thirty-eight, and Forty-seven. Those are the liens or mortgages that were after the death of the decedent. It sets up that it is superior to the liens of the City and the County and the State for unpaid real estate taxes, and that it is superior to the claims of any of the Paul heirs, who inherited this property from their father and mother; and it likewise sets up that it is inferior to these other parcels which are at the bottom of the page, to the ones that were mortgaged before the date of the death.

Then it proceeds to order a sale of these properties and it provides the method of sale, as taken from Title No. 28 of the United States Code, Section 749, providing for the publication, and so forth.

Then, it provides the order that they shall be sold and as set up at the bottom of Page No. 3, the clear properties first, and say that they shall be sold in order named, and then it describes them on the following pages.

It then provides on Page 7 that in the event that the sale of these properties do not yield enough to satisfy the claim of the United States, then, and in that event only, the Marshal shall also sell the other parcels, which are the ones that had mortgages on them inferior to our lien, and they are listed and then the descriptions follow.

At the time—these are the descriptions on Page Seven, which are covered by the mortgages represented by counsel here in this proceeding.

Mr. Reid: That is right. By the way, all of these—

The Court: (Interposing) Are they held by the banks?

Mr. Marold: By the banks, yes. As you will recall, your Honor, we stipulated this whole case, except some testimony that was put in by the Pauls, and all of these attorneys are signed up on that stipulation.

The last page provides that in the case sufficient money is realized from the sale of any of these properties to satisfy our liens, that the sale shall be adjourned, and that the matter be covered by further order of the Court, because, according to the information I have, a number of those mortgaged properties are probably valuable enough to pay our lien, and, because, likewise, it will be satisfied before they sell them all. So that when the Marshal gets enough money to pay the lien, he shall stop and apply to the Court for instructions.

The Court: Now, you get down to the question of selling all of this property covered by these various mortgages, which are subsequent to the lien of the Government?

Mr. Marold: Yes, your Honor.

The Court: Suppose one piece of property was sufficient to stand the whole loss? Then the ones who hold that mortgage—that mortgage loses all?

Mr. Marold: I think practically all of those mortgages are held either by the Detroit Bank or the Detroit Trust Company; aren't they, Mr. Reid?

Mr. Reid: Possibly.

The Court: Well, they are held by two different people.

Mr. Marold: I am allowing that controversy, your Honor, and I had to take some method now, if the mortgagees were to change that order or agree between themselves, or present some other angle on it, and it is all right with us.

The Court: If all the lawyers are here—

Mr. Reid: (Interposing) I think there is one that is held by the Receiver, and one by the Union Guardian, and the Detroit Trust Company and all of them made before the death, so they are not going to be sold.

The Court: I will hear you on it when we get around to it.

Mr. Marold: Well, the only other thing that is provided in the decree is that these sales shall be free and clear of all the liens, including the United States Government's, and then there is a final order that the Court shall retain jurisdiction of the case to enter such further orders as may be necessary, because if there is any money over and above this money, there is going to be a controversy, probably, between the State and the City and the County, and I didn't know how to arrange for that at this time.

The Court: All right.

Mr. Marold: The only other thing I have here to offer is the computation of the amount of the judgment. That shows the interest that has accumulated. That shows how that figure was arrived at on the first page, and your Honor, I suggest the entry of the decree.

The Court: You gentlemen wanted a little time, and in view of counsel's for the Government statement here, and what the Government wishes, and so forth, suppose you take some time and you can come in this afternoon if you wish. This is Motion Day and I could hear you at 1:30, or, if you like, I will hear you now.

Mr. Reid: I don't think, your Honor, we need more time now.

The Court: I thought perhaps, it was to be corrected, or some of that kind, and that it takes a long time, but, all right, go ahead.

Mr. Reid: Are you through?

Mr. Marold: Yes.

Mr. Reid: We represent the Detroit Bank and the Detroit Trust Company. We have no objection to the form of the decree, except there are two problems that we have, possibly, and the one that your Honor mentioned.

Now, as I say, we are the principal creditor involved, and while we might—while we might follow the Marshalling theory—

The Court: You mean, debtor?

Mr. Reid: Creditor of the Pauls.

The Court: Oh.

Mr. Reid: Inferior to the United States, but we are a creditor of the Pauls. We might show an equitable doctrine of inverse order of alienation of these mortgages, but I don't think that that would make a great deal of difference to us, because I think there are only two outside of our pieces, and maybe, it is more trouble to work up a system of that sort than it is to just follow through the parcels, particularly as we have some hopes that the free and clear parcels may discharge the Government's debt anyway, without resorting to the incumbered parcels, so that I don't believe we have any particular objection to that.

Then, we have another point, your Honor, and that is that these parcels that were made—or the ones on which mortgages were made, prior to the death of the Pauls, your Honor has provided that the Government has a lien on those parcels, but it is inferior to the lien of those mortgages. Those mortgages have been foreclosed, and their sale, or re-sale is, of course, held up by these proceedings.

Your Honor has not provided for the sale of these properties; obviously, because you think there is no equity in them, and I think the United States agrees that there is no equity in them. It would be greatly beneficial to the owners of those properties if they could be dismissed out of this suit, because they would then be resalable. Also, if this case is appealed, as I believe there is some thought that it will be, it may go on for a long time and these properties will be held up in this proceeding.

The Court: Does the Government have any objection to that?

Mr. Marold: Your Honor, I have no authority to release those. There is a special Statute which provides that the Commissioner may, upon application, release any lien.

The Court: Commissioner?

Mr. Marold: Commissioner of Internal Revenue. Theoretically, we have a lien on those properties.

The Court: You have a lawsuit in this Court, and the Commissioner is not here.

Mr. Marold: I understand that, but theoretically, we have a lien on those properties.

The Court: The mortgages were given prior to the death?

Mr. Marold: That is right, but we have a lien on them. It is probably true, as Mr. Reid stated, that there no equity left above those mortgages, but I am not authorized to come into this Court and waive any liens we may have.

The Court: The only thing I had in mind is this: ultimately, if the Government gets no part of that property except, you say, one lien that you might have on the surplus, or overplus, after the mortgage is foreclosed, and so forth—

Mr. Marold: (Interposing) Yes.

The Court: It seems to me, for the purpose of the record, there should be something on that record, some day, absolutely making that title free and clear—free and clear of that Government lien, or else it is not merchantable.

Mr. Marold: That is right, your Honor, and here is what we have to suggest. If these people will apply to the Commissioner for release of the property, or have him—that is the Commissioner—instruct me to stipulate that those liens be released in this Court proceeding, that will be all right; that calls for an application down there, stating merely that the Court has found that our lien—rather than their lien is ahead of ours, and probably there is no equity left in it. But at this stage of the game, I cannot agree to that, but only to the facts.

Mr. Reid: I think we can safely say that there is no equity left on those parcels after they have been foreclosed and paid

to the banks, so that any equity of the Pauls is gone, and while that is not binding on the Government, I suppose they are parties to that—at least, because—

The Court: Isn't there sufficient there to pay this bill?

Mr. Reid: No doubt of it, enough to pay it.

Mr. Maroid: I think that is probably true, your Honor, but I don't know what they will bring at a forced sale.

Mr. Reid: The Detroit Bank's loans on them is over one hundred thousand dollars. So, at least, you can see that the bank thought they were worth more than that.

The Court: I would say that if they loaned over one hundred thousand dollars on these properties, what we would ordinarily estimate or charge on appraisal, I would say that property, at least, there is one-third more value there yet, and perhaps half that much more. I don't know what their general plan of appraisal is on mortgaged loans, but this certainly isn't the full value of that property by any means.

Mr. Reid: What I mean, is the Government, it seems to me, is keeping us from selling these other properties, over a theoretical value that is not there. It would be more simple to just dismiss them out of the suit, and the Government isn't losing one dollar of any real value.

The Court: The only way I could dispose of it then, would be through petition to the Commissioner, if he is willing to release the lien.

Mr. Reid: And then, come in and apply—

The Court: The only way I could release it is by taking some testimony here. We have to establish values here so that the Court could be satisfied that those mortgages given subsequent to the death, and liable to this fact—that there is sufficient property to pay the Government's claim.

Of course, it is all on foreclosures of the lien, and I don't know what values, or what prices, these properties would bring, but I am assuming that the banks would probably be there to protect their rights and interests.

Mr. Reid: I think that is satisfactory. We might take this up by an application.

The Court: I think so. If you could satisfy Mr. Marold here, that there is plenty of property left, inasmuch as those titles have ripened now, upon foreclosure in the name of the purchaser, I would say that you really ought to expeditiously —they may want to sell these properties to someone, and as it now stands, it cannot be done.

Mr. Marold: I have no inclination to keep that title. But, like with Parcel No. 50, you know they filed an intervening petition and they called our attention to it down at Washington, and we satisfactorily stipulated to let it out of the case, and I can do that if I get authority to do that.

Mr. Reid: We will take the case up privately then; I mean, we will take that up privately.

The Court: If you do finally agree upon it, there should be some order of release entered here. We should have a record here for the Court files.

Mr. Reid: Another point, your Honor, is whether there should be a stay of the sale. The decree permits a sale, I think, within ten days. Your Honor has ruled that the claims of the City of Detroit and the State of Michigan and the County of Wayne are inferior to those of the United States. Your Honor has also required the marshalling of assets and the sale of unincumbered property first. Those unincumbered properties are heavily incumbered with taxes, probably to their full values, at least from the banks' estimates. So it is a very vital factor in the case, whether or not the decision is going to stand, if the City appeals, because if they are, that is, if they are subject to the City taxes, then they will not realize enough to pay this tax. If they are not subject to the City taxes, they probably will realize the tax. Therefore, no outside bidder can possibly bid, pending an appeal. If the United States should offer these properties for sale, in the next ten days, the bank couldn't go over and bid, because they couldn't afford to bid,

not knowing the final outcome of the tax situation—what it is going to be. So it seems to me that it is to the advantage of the United States and the Pauls and all creditors if this sale is held up pending an appeal.

Also, that the most value will be realized for all parties if the law is finally settled, so that bidding isn't chilled.

The Court: What do you say to that?

Mr. Marold: Well, your Honor, I think what he says is true—that if an appeal is filed, that it would destroy our market. There are the new rules of civil procedure and the law has provided the way in which the sale should be stayed. That is, by putting up a bond and filing a notice of appeal, but, frankly, I don't know the law of the City or County or State—whether they have to put up a bond in that case or not, but I think that should be applied for in the regular course. I certainly don't want to go on record as admitting either in this decree or anywhere else, that I expect this decision to be overturned, and so I don't want to agree to a stay, but in case someone else wants to appeal—

Mr. Reid: That may be, if your Honor wants a sale, but I don't think there is anything requiring you to order a sale.

The Court: The only thing I can do is to order a decree and sign it, and whatever subsequent action you want to take within the next ten days will be settled later.

Mr. Reid: All right, sir.

The Court: It seems to me that the total value of the mortgages upon this property, by your clients, is $100,000.00—

Mr. Reid: (Interposing) Yes, your Honor.

The Court: (Continuing) —and the tax here of about $47,000.00, it would seem to me that a proper bond should be filed, and you are not losing anything anyway. If you lose, you have to pay, and if you win, you do not have to pay.

Mr. Reid: That is true.

The Court: I would say that, without your consenting, I will sign the decree, and then within ten days you can take

what procedure you wish. As a matter of fact, the Government has got security for their claims.

Mr. Marold: Yes, I think they have.

The Court: That is the question I will take up in your later parcels. But, I say, without your consenting to this decree at all, there is nothing here indicating that you are—why, I think that unless some other amendments or corrections should be made, I think I will sign the decree.

Mr. Marold: All right, sir.

The Court: And time will begin to run from today.

Mr. Marold: I don't know whether or not the other parties have anything to say.

The Court: Do any of the other counsel present have anything you wish to put to the Court at this time?

Mr. Lorenzo: If the Court please, I represent the Pauls. We, of course, object to the finding of any tax at all, and in regard to the properties that were mortgaged prior to the death of the ancestors, in which we have equity—although some of them may have been foreclosed, we contend that the foreclosure was premature.

The Court: What do you mean by "premature foreclosure of the mortgages?"

Mr. Lorenzo: I understand that they have been foreclosed since the filing of these proceedings. Now, if that is so, we believe that they should have withheld foreclosure.

The Court: There wasn't any restraining order, was there?

Mr. Lorenzo: I believe not.

The Court: There was nothing in this procedure restraining any judgment foreclosure of mortgages. But, nevertheless, they proceeded at their own hazard.

Mr. Lorenzo: We have equities in these properties, and I believe it would be only a matter of equitable inclination toward the Pauls, who are the real losers in this matter, that if the equities were sold first—

The Court: I don't know whether they are or not. You have got a lot of banks here who have a lot of money in there.

Mr. Lorenzo: Well, they have got over one and a half million dollars throughout the property.

The Court: Who?

Mr. Lorenzo: That is, the properties were originally worth a million and a half dollars.

The Court: That is different.

Mr. Lorenzo: Now, of course, the bank will realize its money, I think, so that they will not suffer any loss, and neither will any of these mortgageholders, so the real loser is the Paul family.

I would suggest, if your Honor would consider it, that—there are three groups of properties—that the Court should order first, the sale of the group in which there were mortgages prior to the death of the ancestors.

The Court: You mean, to have them sold first?

Mr. Lorenzo: Yes; then the next equitable group that should be sold is the group that is without mortgage, and then, I think, the third group would be the group—

Mr. Marold: You mean, the Paul property that is not incumbered?

Mr. Lorenzo: Yes.

The Court: That is owned by the Pauls, and was owned by the deceased at the time of the death?

Mr. Lorenzo: Yes.

The Court: How much of that is there?

Mr. Lorenzo: There are 25 parcels without mortgages, 13 that had mortgages at the time of the death of the ancestors, in which we would have equity.

The Court: Why aren't they the first to be sold?

Mr. Lorenzo: According to the proposition given, your Honor, that group will not be sold at all. The group of 13 that had mortgages on them prior to the death of the ancestors.

The Court: I am talking about the properties that the Pauls owned at the time of their deaths; that is, the properties not incumbered, and was not incumbered then.

Mr. Lorenzo: We would like to have that complete the second group.

The Court: I don't know offhand why it wouldn't be the first group. The Government can get its money out of that. It is the Government's claim against the decedent. It has a lien on it prior to these mortgages.

Mr. Lorenzo: But, if your Honor holds back to the prior mortgages, on these properties, we don't get anything out of them. We are going to lose those equities, whatever they are.

The Court: I am not so familiar with all of the complications and factors of these properties. But, it would seem to me this: That any property there owned by the Pauls at the time of their deaths and not incumbered, should be sold first. Those who subsequently loaned money on the property, why, if there isn't sufficient to pay that debt, that would come, at least, next. I don't know in what order they should be, and I am not fixing any order.

Mr. Lorenzo: Of the three groups, we feel that the third group—that is, the group on which the bank loaned money after the death of the ancestors—should be the last to be sold. We subscribe to that, but, nevertheless if we were—

The Court: I haven't fixed any order yet.

Mr. Lorenzo: Then, your decree, or, at least, in the proposed decree, they divide this up into two groups. The first group, the unincumbered property; and the second group, the incumbered property, subsequent to the death of the decedents. That throws out the group of property in which there were mortgages at the time of the ancestors' deaths. We will lose all—of course, I have heard that there are no equities very likely—but, nevertheless, we should be given the benefit of the sale of those equities, and if they realize anything—it may not be necessary to sell all our unincumbered property.

The Court: I wouldn't want to make any definite determination in this decree, because I can readily see where the order of sale is very important. And, not so much as to the particular parties interested, but if you sold two or three pieces of property that were sufficient to pay the Government's claim, why, all the rest of these properties that are liable for the tax won't pay anything.

Mr. Lorenzo: Yes, but—

The Court: Now, I don't know. You will have to figure that out yourselves, or come in here for an order, or something. Of course, on the other hand, the theory is when the Government, or anybody else, upon execution of sale sufficient of the property to pay the debt, that is the end of it, but the difficulty is that usually we sell a group, or one group, and one individual is harmed. I don't know. What do you say?

Mr. Marold: In the first place, your Honor, in your conclusions of law, you have provided for the marshalling of the assets, the selling of the clear properties first, and the subsequent mortgaged property next, and no sale of the others, and I think it is a complete answer to Mr. Lorenzo's suggestion here about their equities—that those properties have been foreclosed.

The Court: Was the redemption period run out?

Mr. Lorenzo: Yes, your Honor.

Mr. Marold: I am not familiar with the period of the redemption time.

The Court: How long ago did they foreclose—within two or three years? They haven't any equity if the period of redemption runs out.

Mr. Lorenzo: But, your Honor, it could interfere with the foreclosures.

The Court: But what is the occasion of it interfering if the heirs haven't any interest in the property?

Mr. Lorenzo: Because they have foreclosed against this tax lien of the Government at a time when it was being asserted

against the properties. Now, I don't think they should be allowed to question the Government claim against the mortgages, even though those mortgages were prior to the death of the ancestors.

The Court: As a matter of rule and equity, the Pauls and the Paul Estate should first pay the Government's claim of any property that they own, and they are liable for this debt.

Certainly, anyone who loaned money on any other pieces of property shouldn't require—or shouldn't be required to pay, unless there wasn't sufficient Paul property to pay the claim.

Mr. Lorenzo: To be sure, your Honor, but then the properties that have been foreclosed are still our properties, or were at the time these proceedings were instituted. Now, why should those mortgage holders, in a measure, be allowed to adjudicate their rights?

The Court: As I understand it then the mortgages have been foreclosed and the period of redemption had expired?

Mr. Lorenzo: Yes.

The Court: What interests have the Pauls got?

Mr. Lorenzo: Well, they had an interest at the time this bill was filed, which was over and above the mortgage, but the mortgage has been foreclosed; in the face of these proceedings.

The Court: I don't know. The courts have never—***

Mr. Lorenzo: What I want to know is, it asked about—(interrupting, inaudible) ***** Now they ask for an injunction to restrain them *** on the properties free and clear on these other previous mortgages held by the bank subsequent to the death and if I am safe in saying, the Government will not be in here to ask this Court to set aside the foreclosure, if that was the only source, they might release their tax, but simply because there happens to be property on the other side of the fence, they know they are safe in realizing, and there is no reason why the Court should permit the Government to the mortgage rights, that were overlooked before, that are now going to be leased to us.

The Court: They are not leased; you have not leased them.

Mr. Lorenzo: Yes.

The Court: As far as the Pauls' interests are concerned, there is nothing there. The only theory upon which the Government could make any claim on that property is they did foreclose, by foreclosure, subject to what portion of this claim of the Government applied to the property.

Mr. Lorenzo: But those equities were assets and those assets were that the Government had a right to have recourse to the mortgages, they arbitrarily foreclosed their mortgages and have taken those assets out of the estate and deprived the Government of the right which they are asking you now to sanction.

The Court: It hasn't been paid out of the estate; Pauls haven't paid it out of the estate. They made the loan on that property to cover the mortgage and the mortgage was not paid when due and the mortgage was foreclosed. What interests have the Pauls got to convey the redemption period?

Mr. Lorenzo: They had an equity in those properties.

The Court: And how much of an equity did they have in dollars and cents?

Mr. Lorenzo: I don't know.

The Court: You mean if they had not foreclosed, they would have an interest in the property?

Mr. Lorenzo: They had at the time of the foreclosure. That was part of the Paul assets; was it?

The Court: That was part of the Pauls' assets; was it?

Mr. Lorenzo: Why shouldn't the Government foreclose this lien on the property as well as the property to which we have title?

The Court: You are complaining now because the Government did not foreclose on your property, is that it?

Mr. Lorenzo: We think it is only a matter of equity to the Government to foreclose on these equities as well. Why should the Government overlook the assets?

The Court: Don't ask me. I don't know. I am not the Government.

Mr. Lorenzo: I ask the Court to order these foreclosures set aside.

The Court: Oh, no.

Mr. Lorenzo: All foreclosures made after the filing of the Bill of Complaint in this suit.

The Court: Why?

Mr. Lorenzo: Order a sale of those equities. The Court could do that.

The Court: I won't enter any such an order.

Mr. Lorenzo: Well, they are assets.

The Court: They were assets, but the assets have been lost.

Mr. Lorenzo: They are not lost yet, unless the Court refuses to interfere with those foreclosures. I think the Court can interfere with those foreclosures.

The Court: How can I interfere with them? No injunction was ever granted restraining them from foreclosing; was there?

Mr. Lorenzo: No.

The Court: That property may be in the hands of two or three different people at this time. I don't know.

Mr. Lorenzo: No.

The Court: All right.

Mr. Reid: I don't think I need to reply to that.

Mr. Witherspoon: I am John Witherspoon, representing the City of Detroit.

The Court: How is that?

Mr. Witherspoon: I am John Witherspoon, representing the City of Detroit. I have no objection to the form of the decree. It apparently conforms to your Honor's findings of fact and conclusions of law. I am a little bit concerned about the possibility of an appeal. I am going to present the matter to the Common Council and ask for their authority and advice. I think we can probably get their conclusion within a

period of ten days, but I assume the Government does not expect to act that promptly in any event.

Mr. Marold: I don't know, offhand.

The Court: I don't know; I cannot give or hold out any assurance.

Mr. Marold: We will give him time to file—The Common Council, I mean—a reasonable time certainly, and won't order the sale until he has had an opportunity to bid.

The Court: That is all right then.

Mr. Witherspoon: That is satisfactory.

The Court: Yes.

Mr. Witherspoon: That is all we are concerned about.

The Court: I don't think there is any disposition on the part of the Government or anybody else to present any proofs here. I would say if I was in this—it is a vital question with reference to real estate and loans upon real estate, and I don't know.

Mr. Witherspoon: Well, that is all.

The Court: If somebody can sit down and say that they have a lease on the property and then don't file any of the records with the Register of Deeds office, or any notice to anybody, I don't know. I think, however, according to the authorities there is no question but what at least I think I have arrived at the right conclusion based upon the authorities, but—

Mr. Marold: I think you have too, your Honor.

The Court: Everybody, in talking about anything—They always say Notice, Where is your Notice? Well, in any event, you have ten days, Mr. Witherspoon, and you gentlemen here, if you cannot move within the ten days, come in with the motion and I haven't any doubt that the Government will consent to the extension for appealing or for the City of Detroit to determine whether or not it wants to appeal. You did not look at this computation.

Mr. Marold: I got some copies of those.

Mr. Reid: I haven't seen that yet.

Mr. Marold: I furnished it to Mr. Lorenzo.

The Court: Furnish it to counsel and the counsel for the City of Detroit; if you have an extra copy.

Mr. Marold: I will get some; I don't have them right now.

The Court: You want to file the computation?

Mr. Marold: I thought if your Honor wanted it.

The Court: You may file it here so that it will be here.

Mr. Marold: Thank you, your Honor.

The Court: Yes.

STATE OF MICHIGAN
COUNTY OF WAYNE } SS:

I, Arnold I. Feuerman, do hereby certify that I stenographically reported the foregoing proceeding; that I did later transcribe my said shorthand notes into typewritten form, comprising pages (1) through (24), inclusive, of the foregoing transcript; and that the foregoing is a true and accurate transcription of my shorthand notes.

ARNOLD FEUERMAN

STATE OF MICHIGAN
COUNTY OF WAYNE } SS:

I, Aaron A. Silberblatt, do hereby certify that I stenopraphically reported the foregoing proceeding; that I did later transcribe my said shorthand notes into typewritten form, comprising pages (25) through (30), inclusive, of the foregoing transcript; and that the foregoing is a true and accurate transcription of my shorthand notes.

AARON A. SILBERBLATT,
Official Reporter,
Wayne Circuit Court.

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Exhibit 1

EXHIBIT 1

Form 668 Revised Feb. 1934
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

NOTICE OF TAX LIEN UNDER INTERNAL REVENUE LAWS

No. 4855

UNITED STATES INTERNAL REVENUE,

DISTRICT OF Michigan

December 26, 1935, 19

Pursuant to the provisions of Section 3186 of the Revised Statutes of the United States, as amended by Section 613 of the Revenue Act of 1928 (Act of May 29, 1928, 45 Stat., 875) and Section 509 of the Revenue Act of 1934 (Act of May 10, 1934, 48 Stat., 757), notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statute the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

Name of taxpayer Estate of John P. Paul (Lona Paul, beneficiary)

Residence or place of business 207 King Avenue, Detroit, Michigan

Nature of tax estate tax

Taxable period , 19

Amount of tax assessed $31,352.12

Additional (penalty) tax assessed $

Date assessment list received February 23, 1933, 19

Giles Kavanagh
Collector.

CERTIFICATE OF OFFICER AUTHORIZED BY LAW TO TAKE ACKNOWLEDGMENTS

STATE OF Michigan
COUNTY OF Wayne
} ss:

On this day personally appeared before me a Notary Public (Official title) in and for the State and County aforesaid, Giles Kavanagh Collector of Internal Revenue for the district of Michigan to me well known as the person who executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein expressed.

In witness whereof I have hereunto set my hand and official seal, this the 26th day of December, 19 35

James E. Cummins

[SEAL] (Notary Seal)

Notary Public, Wayne County, Michigan (Official title)
My Commission expires Sept. 25, 1939

TO Clerk of United States District Court
Detroit, Michigan

Filed in Clerk's Office
December 30th, 1935
Elmer W. Voorheis, Clerk

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207

Exhibit 1

No. .....

UNITED STATES

vs.

NOTICE OF TAX LIEN

Filed this ..... *day of*

....., 19....., *at* ..... *m.*

.....

Clerk (or Registrar).

.....

SECTION 3186, R. S., as amended by SECTION 613, Revenue Act of 1928 and SECTION 506, Revenue Act of 1934. "(a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto), shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

"(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

"(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated whenever the State or Territory has by law provided for the filing of such notice; or

"(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

"(3) in the office of the clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

"(c) Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

"(1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

"(2) May issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations;

"(3) May issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

"(4) May issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States.

"(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

"(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond, complying both with the requirements of section 272 (j) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency), or of [illegible] provisions of any prior law, and the requirements of subsection (c) of this section.

"(f) Subsections (c), (d), and (e) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section."

INSTRUCTIONS

Notice on this form should be filed as above provided and in accordance with instructions contained in Internal Revenue Circular of March 18, 1913. (T. D. 1841.)

All such notices should be numbered in consecutive order, and each Certificate of Discharge (Form 669), when issued should be given a number corresponding to that given the notice previously issued.

The filing of the notice, in each case, should be noted in the "Remarks" column of the Assessment List, opposite the name of the taxpayer. For such purpose the serial number and date of issuance of the notice will be sufficient.

Upon payment of the assessed tax and all penalties, interest, and costs incurred (not including filing fees), a Certificate of Discharge (Form 669) should be at once issued, and filed with the proper filing officer.

All fees for filing are payable by the United States. Bills for the same should be rendered against the collector of internal revenue, who will make payment after authorization by the Commissioner of Internal Revenue.

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Exhibit 2

EXHIBIT 2

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TREASURY DEPARTMENT
Internal Revenue Service

NOTICE OF TAX LIEN UNDER INTERNAL REVENUE LAWS

No. 4855

UNITED STATES INTERNAL REVENUE,

DISTRICT OF Michigan

December 26, 1935, 19

Pursuant to the provisions of Section 3186 of the Revised Statutes of the United States, as amended by Section 613 of the Revenue Act of 1928 (Act of May 29, 1928, 45 Stat., 875) and Section 509 of the Revenue Act of 1934 (Act of May 10, 1934, 48 Stat., 757), notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statute the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

Name of taxpayer Estate of John P. Paul (Lena Paul, beneficiary)

Residence or place of business 207 King Avenue, Detroit, Michigan

Nature of tax estate tax

Taxable period _____, 19

Amount of tax assessed $31,352.12

Additional (penalty) tax assessed $

Date assessment list received February 23, 1933, 19

GILES KAVANAGH
Collector.

CERTIFICATE OF OFFICER AUTHORIZED BY LAW TO TAKE ACKNOWLEDGMENTS

STATE OF Michigan
COUNTY OF Wayne
ss:

On this day personally appeared before me a Notary Public (Official title) in and for the State and County aforesaid, Giles Kavanagh Collector of Internal Revenue for the _____ district of Michigan to me well known as the person who executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein expressed.

In witness whereof I have hereunto set my hand and official seal, this the 26th day of December, 19 35.

JAMES E. CUMMINS

[SEAL]

Notary Public, Wayne County, Michigan (Official title)
My Commission expires Sept. 25th, 1939

TO Register of Deeds
Wayne County, Michigan

Feb 1933 P 100 L O
2nd sup

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Exhibit 2

209

No. .....

UNITED STATES

vs.

NOTICE OF TAX LIEN

Filed this ..... day of

....., 19....., at ..... m.

.....

Clerk (or Registrar).

.....

SECTION 3186, R. S., as amended by SECTION 613, Revenue Act of 1928 and SECTION 506, Revenue Act of 1934. "(a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto), shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

"(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

"(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated whenever the State or Territory has by law provided for the filing of such notice; or

"(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

"(3) in the office of the clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

"(c) Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

"(1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

"(2) May issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations;

"(3) May issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

"(4) May issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States.

"(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

"(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond, complying both with the requirements of section 272(*f*) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency) or of any similar provisions of any prior law, and the requirements of subsection (*c*) of this section.

"(*f*) Subsections (*c*), (*d*), and (*e*) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section."

INSTRUCTIONS

Notice on this form should be filed as above provided and in accordance with instructions contained in Internal Revenue Circular of March 13, 1913. (T. D. 1841.)

All such notices should be numbered in consecutive order, and each Certificate of Discharge (Form 669), when issued should be given a number corresponding to that given the notice previously issued.

The filing of the notice, in each case, should be noted in the "Remarks" column of the Assessment List, opposite the name of the taxpayer. For such purpose the serial number and date of issuance of the notice will be sufficient.

Upon payment of the assessed tax and all penalties, interest, and costs incurred (not including filing fees), a Certificate of Discharge (Form 669) should be at once issued, and filed with the proper filing officer.

All fees for filing are payable by the United States. Bills for the same should be rendered against the collector of internal revenue, who will make payment after authorization by the Commissioner of Internal Revenue.

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Exhibit 2

M-[illegible]

STATE OF MICHIGAN, County of Wayne } ss.

Office of REGISTER OF DEEDS

I, HAROLD E. STOLL, Register of Deeds for said County, do hereby certify that I have compared the foregoing copy of NOTICE OF TAX LIEN bearing date the twenty-sixth day of December in the year of our Lord one thousand nine hundred thirty-five and recorded in said Register's office on the second day of January in the year of our Lord one thousand nine hundred thirty-six in Liber Filed of #5162 pages to both inclusive, with the original record thereof, now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of such original Record.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the Register's Office, at the City of Detroit this twelfth day of November A. D. one thousand nine hundred and thirty-six eight

No. 23491

Harold E. Stoll Register of Deeds

SUCKERT, L L C CO [illegible]

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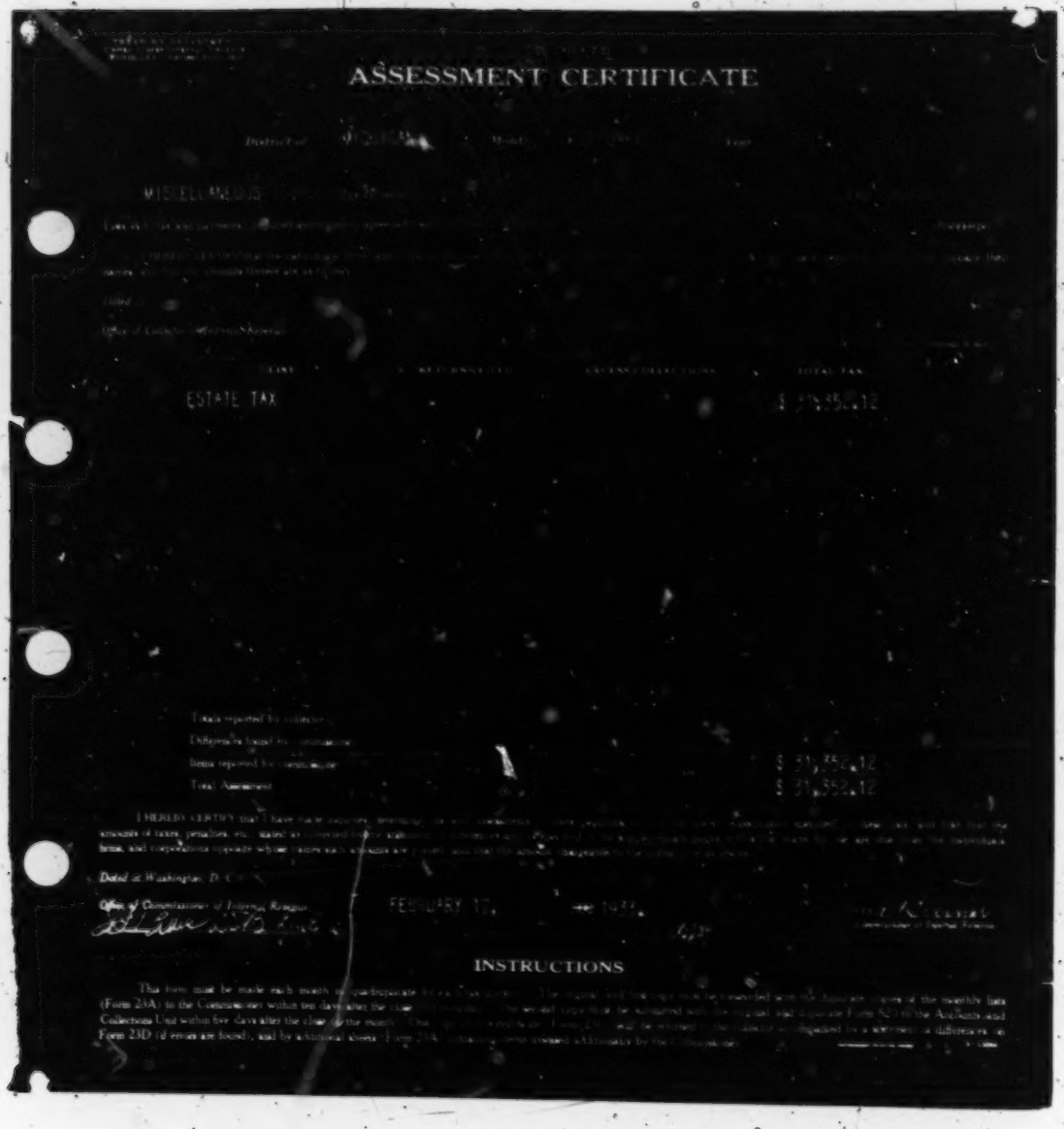
EXHIBIT 3



ASSESSMENT CERTIFICATE

MISCELLANEOUS

ESTATE TAX

INSTRUCTIONS

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EXHIBIT 4

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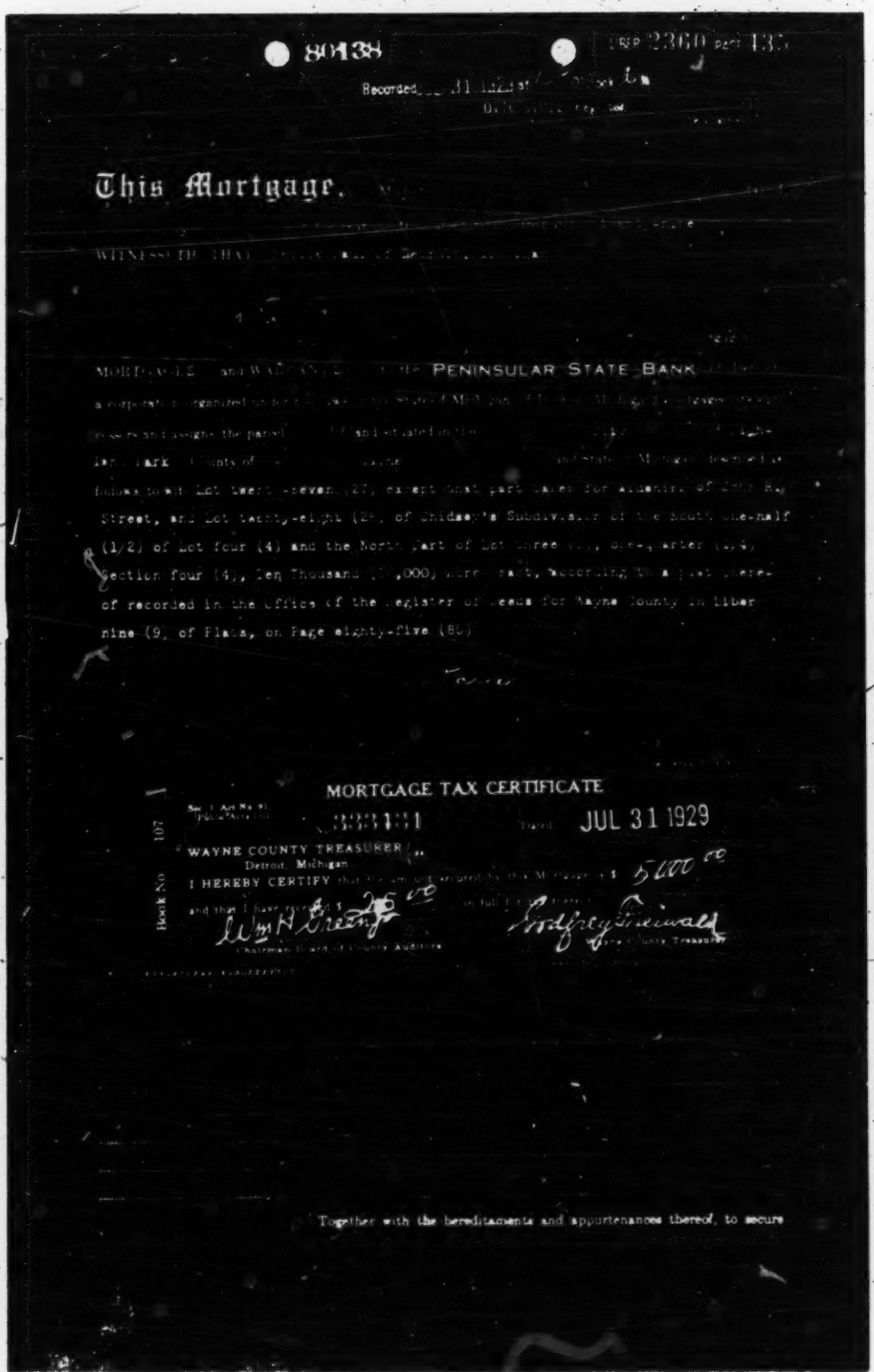
Exhibit 5

EXHIBIT 5

80138 LIBER 2360 PAGE 135



Recorded 31 1929 at [illegible] o'clock [illegible]

[illegible]

This Mortgage.

WITNESSETH THAT [illegible]

MORTGAGES and WARRANTS [illegible] the PENINSULAR STATE BANK [illegible] a corporation organized under [illegible] State of Michigan [illegible] Mortgagee [illegible] cessors and assigns the parcel [illegible] and situated in the [illegible] Highland Park County of [illegible] Wayne [illegible] State of Michigan described as follows to wit: Lot twenty-seven (27) except that part taken for widening of [illegible] Street, and Lot twenty-eight (28) of Chidsey's Subdivision of the South one-half (1/2) of Lot four (4) and the North part of Lot three [illegible], one-quarter (1/4) Section four (4), Ten Thousand ([illegible],000) Acre Tract, according to a plat thereof recorded in the Office of the Register of Deeds for Wayne County in Liber nine (9) of Plats, on Page eighty-five (85)

[illegible]

MORTGAGE TAX CERTIFICATE

Sec. 1 Act No. 91 [illegible]

Book No. 107

333131 Dated JUL 31 1929

WAYNE COUNTY TREASURER
Detroit, Michigan

I HEREBY CERTIFY that the amount secured by this Mortgage is $ 5000.00 and that I have received $ 25.00 in full for the [illegible]

Wm H Greenfield
Chairman Board of County Auditors

Godfrey Freiwald
Wayne County Treasurer

Together with the hereditaments and appurtenances thereof, to secure

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Exhibit 5

LIBER 2360 PAGE 436

performance of the covenants hereinafter contained, and the payment of the principal sum of Five Thousand ($5000.00)- - - -

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Exhibit 5

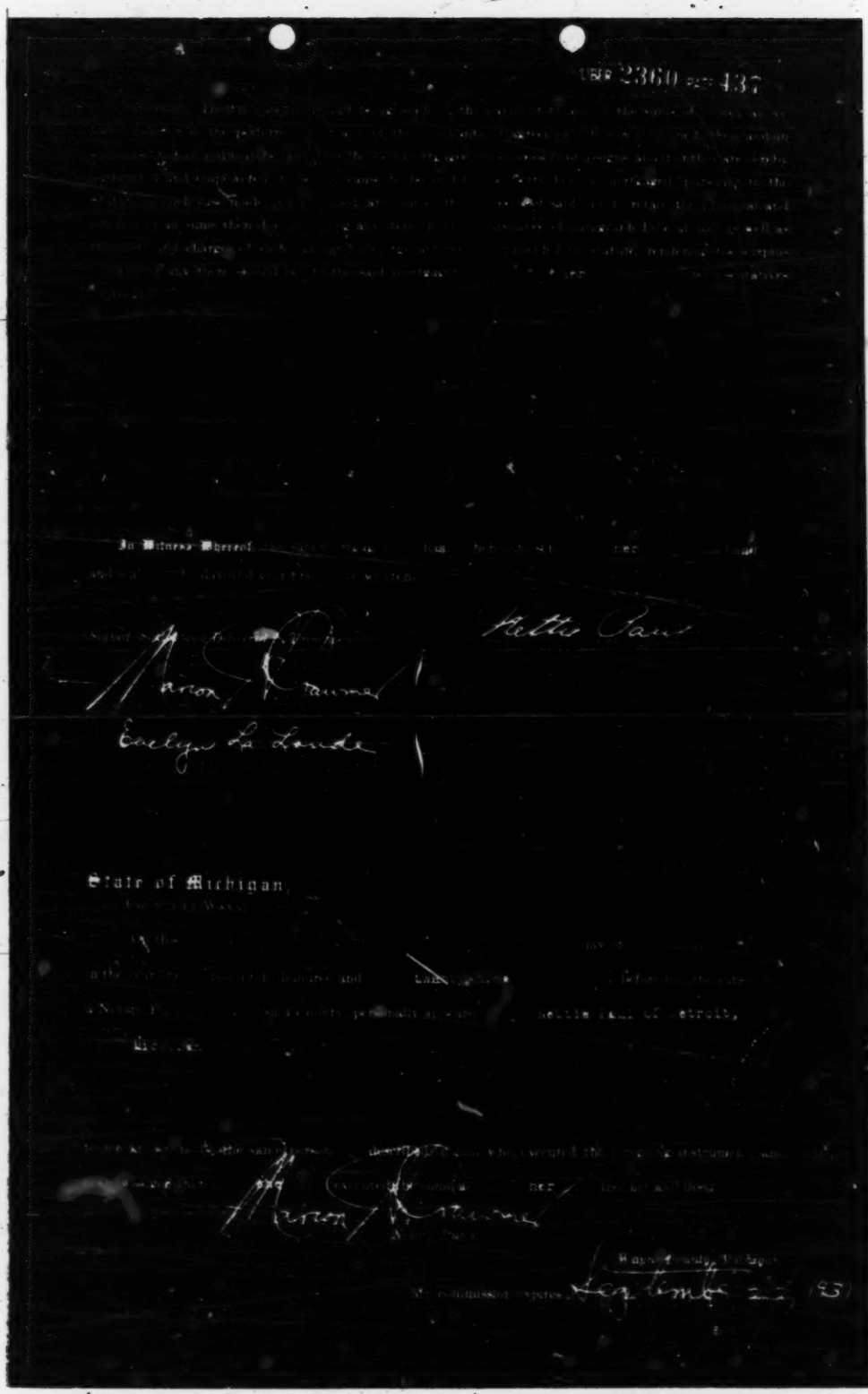

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Exhibit 5

State of Michigan.

Mortgage (15)

PENINSULAR STATE BANK

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Exhibit C

EXHIBIT C

LAND CONTRACT—Installment and Assignment. Reg Use in Detroit. | No. 810 | 11-13

Article of Agreement,

Made this fourteenth day of July A. D. 1914, BETWEEN PHILLIP YOUNG and MARION M. YOUNG, his wife, of the City of Detroit in the County of Wayne, and State of Michigan, parties of the first part, and LOUIS OGUSHAVETZ of the same place, party of the second part, in the manner following: The said parties of the first part, in consideration of the sum of EIGHTY-FIVE HUNDRED ($8500.00) - - - - - - - - - Dollars, to be to them July paid, hereby agree to sell unto the party of the second part, all the certain piece or parcel of land, lying and being situate in the City of Detroit, in the County of Wayne and State of Michigan, and more particularly known and described as Lot Thirty-five (35), of Albert Crane and William B. Wesgun's Subdivision of Out Lot One Hundred Seventy-three (173) of the L. Beaubien Farm, Detroit, as recorded February 19th, 1849 in Liber 35 page 201 of Deeds.--

for the sum of EIGHTY-FIVE HUNDRED ($8500.00)- - - - - - - - - - - - Dollars, which the said party of the second part hereby agrees to pay the parties of the first part, as follows: One Thousand ($1000.00) - Dollars, at the date hereof, and the remaining Seventy-five Hundred ($7500.00) Dollars in annual payments of Two Hundred and Fifty ($250.00) Dollars or more each, (Said second party shall have the right to pay off the entire principal at any time.)

with interest on all sums at any time unpaid hereon at the rate of six per cent. per annum till due, and thereafter at the rate of six per cent. per annum till paid, payable semi-annually from the date hereof. Said party of the second part also agrees to pay ALL taxes and assessments, extraordinary as well as ordinary, that shall be taxed or assessed on said premises from the date hereof until said sum shall be fully paid as aforesaid.

And it is Also Agreed, By and between the parties to these presents, that the said party of the second part shall and will pay the expenses of keeping the buildings erected and to be erected, upon the lands above contracted for, insured against loss and damage by fire, by insurers, in manner and amount approved by the said parties of the first part, such expense to be chargeable hereon if paid by the parties of the first part. And the said parties of the first part, on receiving the afore-mentioned payment in full, at the times and in the manner above mentioned, and all sums chargeable in favor hereon, and upon the surrender of the duplicate of this contract, shall at their own proper cost and expense, execute and deliver to the said party of the second part, or to his assigns, a good and sufficient conveyance in fee simple, of said described lands, free and clear of and from all liens and incumbrances, except such as may have accrued thereon subsequent to the date hereof, by or through the acts or negligence of said party of the second part or his assigns.

It is Mutually Agreed between said parties, that the said party of the second part shall have possession of said premises on and after this date, while he shall not be in default on his part in carrying out the terms hereof, taking and holding such possession hereunder, and shall keep the same in as good condition as they are at the date hereof, until the said sum shall be paid as aforesaid; and if said party of the second part shall fail to perform this contract, or any part of the same, said parties of the first part shall immediately after such failure, have a right to declare the same void, and retain whatever may have been paid hereon, and all improvements that may have been made on said premises, and may consider and treat the party of the second part as a tenant holding over without permission, and may take immediate possession of the premises, and remove the party of the second part therefrom.

And it is Agreed that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, The said parties have hereunto set their hands and seals the day and year above.

Sealed and Delivered in Presence of

N. F. Sullivan

John Mann

Phillip Young SEAL

Marion M. Young SEAL

Louis Ogushavetz SEAL

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Exhibit C

218

Wayne Co. C

LAND CONTRACT.

This Indenture, Made and entered into this [illegible] day of [illegible] in the year of our Lord one thousand nine hundred and [illegible] between [illegible] party of the first part, and [illegible] party of the second part, Witnesseth, That the said party of the first part, for and in consideration of the sum of [illegible] Dollars, to be paid as hereinafter mentioned, does hereby agree to sell and convey unto the said party of the second part, the following described lot, piece or parcel of land, situated in the City of Detroit, County of Wayne and State of Michigan, to wit: [illegible]

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, unto the said party of the second part, [illegible] heirs and assigns, forever.

And the said party of the second part, in consideration of the premises, does hereby agree to pay unto the said party of the first part, [illegible] heirs or assigns, the sum of [illegible] Dollars, in the manner following, to wit: [illegible]

City Taxes payable from July 1st to July 31st, without percentage, at the Receiver of Taxes' Office, second floor of City Hall.

State and County Taxes payable from December 1st to December 31st, without percentage, at County Treasurer's Office, County Building.

Dated, [illegible]

I hereby consent that the interest of [illegible] in the within Contract be assigned to [illegible] subject to all the conditions and obligations therein contained.

[illegible]

In consideration of [illegible] Dollars to me in hand paid, I do hereby sell, assign and transfer unto Abraham Cooper all my right, title and interest in and to the within Contract, and advantages to be derived therefrom.

[illegible]

Assignee above named, do hereby accept the above assignment, and do hereby covenant and agree to and with [illegible] the part of the first part to the within Contract, in consideration of [illegible] contract above given, to assume, perform and carry out with all the conditions and obligations therein contained on the part of the part of the second part thereby to be performed.

[illegible]

Received Payments on the within Contract as follows:

Received the $1,000.00 due on delivery hereof July 14, 1914

Month	Day	Year		Month			Month	Day	Year	
Jan	14	1915				225.00	Jan	9	1917	
July	14	1914				225.00	Interest			
Oct	7th	1915	400.00	Cancelled						
Jan	14	1916	7250.00			Interest on Contract				225.00
July	14	1916	250	2/20	7000	Interest	Jan	14	1917	245.00
July	14	1917	250	240	6750.00					
Jan	14	1918		202.50	6750.00	Int. Interest				Cancelled
July	15th	1918	250.00	202.50	6500.00	Interest	Jan	14	1919	Cancelled
Jan	14	1919	250.00	195.00	6250.00	Interest	Jan	14	1919	Cancelled
July	14	1919	250.00	187.50	6000.00	Interest	Jan	14	1919	Cancelled
Jan	14	1920	250.00	180.00	5750.00	Interest	Jan	14	1919	Cancelled
July	14	1920	250.00	172.50	5500.00	Interest	Jan	14	1919	Cancelled
Jan	14	1921	250.00	165.00	5250.00	Interest	Jan	14	1919	Cancelled
July	14	1921	250.00	157.50	5000.00	Interest	Jan	14	1919	Cancelled
Jan	14	1922	250.00	150.00	4750.00	Interest	Jan	14	1919	Cancelled
July	14	1922	250.00	142.50	4500.00	Interest	Jan	14	1919	Cancelled

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Exhibit C

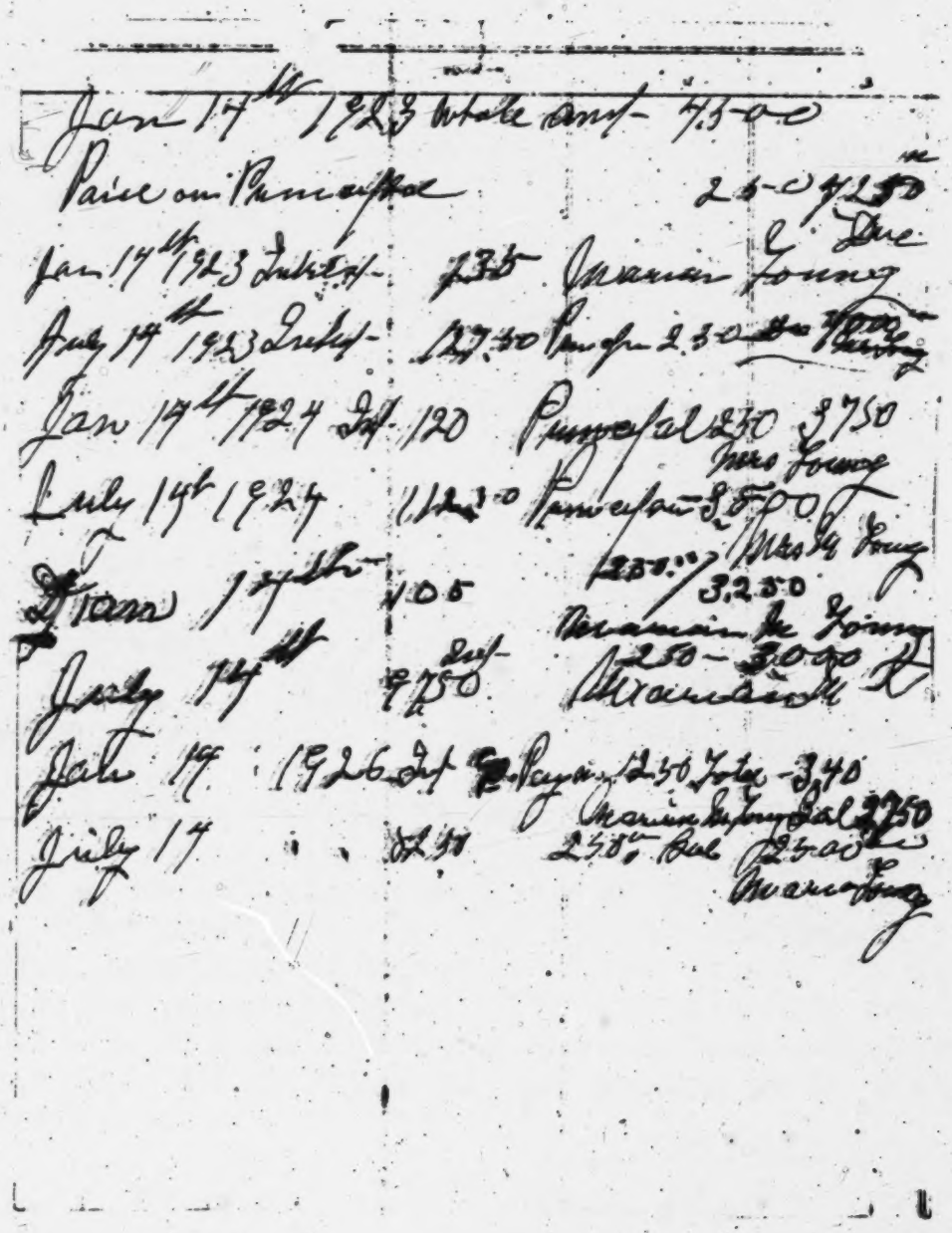

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Exhibit C

Detroit, July 15,19..

I hereby consent that the interest of Abraham Cooper in the within contract be assigned to John J. Paul and Lena Paul, subject to all the conditions and obligations therein contained

Clarence Young

In consideration of One Dollar and other valuable considerations to me in hand paid I do hereby sell, assign and transfer unto John J. Paul and Lena Paul, his wife, all my right, title and interest in and to the within contract and advantages to be derived therefrom,

Abraham Cooper

25

Witness
J. J. Cundes
B. Paul

We assignees above named, do hereby accept the above assignment and do hereby covenant and agree to and with Abraham Cooper, the party of the first part to the within Contract in consideration of consent above given, to assume perform and carry out with him all the conditions and obligations therein contained on th part of the parties of the second part thereto performed

J. P. Paul
Lena Paul

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REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed May 1, 1939)

Now comes THE DETROIT BANK, a Michigan banking corporation, one of the defendants in the above entitled cause, by Miller, Canfield, Paddock and Stone, its attorneys, and respectfully requests that this Court make and enter the following Findings of Fact:

I.

Said defendant requests that this Court find as facts and include in its Findings of Fact all of the facts stipulated as true in the "Stipulation of Facts" signed by the attorneys for all of the interested parties herein, filed in this cause on July 19, 1938, and submitted at the trial of this cause.

II.

That at the times that The Detroit Bank loaned money upon the security of mortgages covering Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38, respectively, and at the times respectively which it acquired mortgages on said parcels, it had no knowledge or notice, either actual, constructive or otherwise, that plaintiff, United States of America, had or claimed to have or proposed or intended to assert any claim, lien or charge on, against or with respect to any of said parcels arising out of Estate Taxes payable, or claimed to be payable, by the Estate of John P. Paul, deceased, or arising out of any matter, fact, cause or thing whatsoever.

III.

That The Detroit Bank acquired mortgages covering Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38 in good faith, for value, and without any notice or knowledge, either actual, constructive or otherwise, that plaintiff, United States of America, had or claimed to have, or proposed or intended to assert, any claim, lien or charge on, against or with respect to any of

said parcels arising out of Estate Taxes payable or claimed to be payable by the Estate of John P. Paul, deceased, or arising out of any matter, fact, cause or thing whatsoever.

IV.

That The Detroit Bank acquired mortgages covering Parcels 2, 4, 7, 9, 10, 11, 20, 31, 32 and 38 prior to the date upon which the plaintiff, United States of America, first asserted or claimed that any deficiency in Estate Taxes was payable by the Estate of John P. Paul, deceased, and prior to the time that the United States Board of Tax Appeals first determined that any deficiency was payable by the Estate of John P. Paul, deceased, with respect to Estate Taxes.

V.

That The Detroit Bank acquired mortgages covering Parcels 1 and 8 prior to the time when the United States Board of Tax Appeals first determined that any deficiency in Estate Taxes was payable by the Estate of John P. Paul, deceased.

VI.

That The Detroit Bank acquired mortgages on Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38 prior to February 25, 1933, the date upon which plaintiff, United States of America, by the Collector of Internal Revenue at Detroit, Michigan, first made demand for the payment of Federal Estate Taxes payable by the Estate of John P. Paul, deceased, to collect which this action is instituted.

VII.

That notice of the lien herein sought to be foreclosed by plaintiff, United States of America, was first filed by it in the Office of the Register of Deeds for Wayne County, Michigan, on December 26, 1935, and that no notice of the lien herein sought to be foreclosed was filed, recorded or otherwise made a matter of public record prior to December 26, 1935.

VIII.

That prior to February 23, 1933, and therefore prior to December 26, 1935, The Detroit Bank had acquired mortgages covering Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38.

IX.

That the notice of the lien herein sought to be foreclosed by plaintiff was not filed or recorded in the Office of the Register of Deeds for Wayne County against any specific parcel of property, nor did said notice of lien purport or attempt to describe specifically the property against which said notice of lien was filed.

In addition to the Findings of Fact above requested, this defendant further requests that this Court declare and enter the following Conclusions of Law:

I.

That plaintiff, United States of America, has no claim, lien or charge of any kind, name, nature and description whatsoever on Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38 superior to the claim, lien, charge or title thereon or thereto possessed by The Detroit Bank, and that the claim, lien, charge and title of The Detroit Bank on, against and with respect to each and all of said parcels is prior in time and superior in right to any claim, lien or charge which plaintiff may have on, against or with respect to any of said parcels.

II.

That the lien sought to be foreclosed herein by plaintiff, United States of America, is imposed by *Title 26 USC, Section 1560 (Section 3186 (a) Revised Statutes)* and not by *Section 315 (a) of the Revenue Act of 1926.*

III.

That the lien mentioned in *Section 315 (a) of the Revenue Act of 1926* is not separate and distinct from the lien imposed

by *Title 26 USC, Section 1560 (Section 3186 (a) Revised Statutes).*

IV.

That *Section 315 (a) of the Revenue Act of 1926* imposes no lien *ex proprio vigore* but simply defines some of the incidents of the lien imposed by *Title 26 USC, Section 1560 (Section 3186 (a) Revised Statutes)* designed to insure the effectiveness of the lien imposed by the latter section as a method of enforcing claims for Estate Taxes.

V.

That *Title 26 USC, Section 1562 (Section 3186 (b) Revised Statutes)* requiring the filing of notice of liens applies to the lien mentioned in *Section 315 (a) of the Revenue Act of 1926* for the reason that the lien mentioned in said *Section 315 (a)* is the lien imposed by *Title 26 USC, Section 1560 (Section 3186 (a) Revised Statutes).*

VI.

That the notice of lien mentioned in *Section 315 (a) of the Revenue Act of 1926* must be filed or recorded prior to the acquisition by purchasers, mortgagees and judgment creditors of titles, liens and charges in order to make the lien mentioned in said *Section 315 (a)* valid as against such purchasers, mortgagees and judgment creditors.

VII.

That in order to make the lien herein sought to be foreclosed valid as against The Detroit Bank with respect to Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38, it was necessary that notice of said lien be filed in the manner prescribed by *Title 26 USC, Section 1562 (Section 3186 (b) Revised Statutes)* prior to the acquisition by The Detroit Bank of mortgages covering said parcels.

VIII.

That in order to make the lien herein sought to be foreclosed valid as against The Detroit Bank with respect to Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38, it was necessary that notice of such lien filed in accordance with *Title 26 USC, Section 1562 (Section 3186 (b) Revised Statutes)*, specifically describe the property against and with respect to which the lien was asserted.

IX.

That the lien mentioned in *Section 315 (a) of the Revenue Act of 1926* is not a prior lien but is subordinate to liens, claims and charges acquired by purchasers, mortgagees and judgment creditors in good faith, for value, and prior to any notice or knowledge, either actual, constructive or otherwise, that any lien is claimed or asserted with respect to Federal Estate Taxes.

X.

That the doctrine that Congressional Reenactment of statutory provisions without change after uniform, general and long continued administrative interpretation or construction is an adoption by Congress of such interpretation or construction, has no application to this case.

XI.

That it was first authoritatively determined that property acquired subsequent to 1916 by husband and wife as tenants by the entireties was includable in the gross estate of a deceased tenant by the entirety on May 19, 1930, which was subsequent to the time when The Detroit Bank acquired mortgages covering Parcels 2, 4, 7, 9, 10, 11, 20, 31, 32 and 38, all of which said parcels were acquired by John P. Paul and Lena Paul, his wife, as tenants by the entireties, subsequent to 1916, except Parcels 7, 9, 10 and 11, which were acquired by John P. Paul and Lena Paul, his wife, as tenants by the entireties prior to 1916.

XII.

That it was first authoritatively determined that property acquired prior to 1916 and held by a husband and wife as tenants by the entireties was includable in the gross estate of a deceased tenant by the entirety in 1938, which was subsequent to the date upon which The Detroit Bank acquired its mortgages on Parcels 1, 7, 9, 10 and 11, which parcels John P. Paul and Lena Paul, his wife, acquired as tenants by the entireties prior to 1916.

XIII.

That any claim, lien or charge which plaintiff, United States of America, may have on Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38, which is subsequent in time or inferior in right to the claims, liens, charges and title of The Detroit Bank with respect to said parcels has become barred and terminated by virtue of the foreclosure by The Detroit Bank of the mortgages owned by it covering said parcels.

XIV.

That if *Section 315 (a) of the Revenue Act of 1926* is construed to impose a lien which gives plaintiff, United States of America, precedence or priority over the mortgages of The Detroit Bank covering Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38, which mortgages The Detroit Bank acquired in good faith, for value, and without any notice or knowledge, either actual, constructive or otherwise, that plaintiff, United States of America, had, claimed to have, or proposed or intended to assert, any claim, lien or charge on any of said parcels arising out of Estate Taxes payable or claimed to be payable by the Estate of John P. Paul, deceased, said *Section 315 (a) of the Revenue Act of 1926* violates the interdict of the Fourteenth Amendment of the Constitution of the United States of America and is unconstitutional, null, void and of no force or effect whatsoever.

XV.

That if this Court finds that the lien claimed by plaintiff, United States of America, with respect to Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38 is superior to the lien, charge and title possessed by The Detroit Bank on or with respect to said parcels, this Court direct that the parcels of real estate herein involved, which are unencumbered and which are owned by persons who are direct or indirect beneficiaries of the Estate of John P. Paul, deceased, or their grantees, be first sold to satisfy any claim established by plaintiff in these proceedings against any of the property herein involved before any of said parcels on which The Detroit Bank had mortgages are sold to satisfy any such claim.

XVI.

That the lien mentioned in *Section 315 (a) of the Revenue Act of 1926* does not in any event extend to any property which a decedent owned as tenant by the entireties and, therefore, there is not and never has been any claim, lien or charge of any kind, name, nature or description whatsoever on, against or with respect to Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38 in favor of plaintiff, United States of America.

MILLER, CANFIELD, PADDOCK AND STONE,
By EMMETT E. EAGAN,
Attorneys for The Detroit Bank,
3456 Penobscot Building,
Detroit, Michigan.

Dated: May 1, 1939.

AMENDMENT TO REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed May 3, 1939)

Now comes THE DETROIT BANK, a Michigan banking corporation, one of the defendants in the above entitled cause, by Miller, Canfield, Paddock and Stone, its attorneys, and amends paragraph XIV of its Request for Conclusions of Law to read as follows:

That if *Section 315 (a) of the Revenue Act of 1926* is construed to impose a lien which gives plaintiff, United States of America, precedence or priority over the mortgages of The Detroit Bank covering Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38, which mortgages The Detroit Bank acquired in good faith, for value, and without any notice or knowledge, either actual, constructive or otherwise, that plaintiff, United States of America, had, claimed to have, or proposed or intended to assert, any claim, lien or charge on any of said parcels arising out of Estate Taxes payable or claimed to be payable by the Estate of John P. Paul, deceased, said *Section 315 (a) of the Revenue Act of 1926* violates the interdict of the Fifth and Tenth Amendments of the Constitution of the United States of America and is unconstitutional, null, void and of no force or effect whatsoever.

MILLER, CANFIELD, PADDOCK & STONE,
By EMMETT E. EAGAN,
Attorneys for The Detroit Bank,
3456 Penobscot Building,
Detroit, Michigan.

Dated: May 3, 1939.

REQUEST OF UNITED STATES FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed October 10, 1938)

Comes now the United States, the plaintiff, by its attorney, John C. Lehr, United States Attorney, and respectfully requests that the Court make and enter the following Findings of Fact:

I.

Plaintiff requests that the Court include in its findings all of the facts contained in the Stipulation of Facts signed by the attorneys for all of the interested parties herein, filed on July 19, 1938, and submitted at the trial of this cause.

II.

That by letter dated February 25, 1933, the plaintiff, by the Collector of Internal Revenue at Detroit, made demand for the payment of the Federal Estate Tax in question.

III.

That notice of the Federal Estate Tax lien was filed by the Collector of Internal Revenue in the office of the Recorder of Deeds of Wayne County, Michigan, on December 26, 1935.

In addition to the above requested Findings of Fact, the Court is further requested to declare and enter the following Conclusions of Law:

I.

This Court has jurisdiction of the parties and of the subject matter of this cause.

II.

By virtue of the assessment made by the Commissioner of Internal Revenue, on February 19, 1933, pursuant to a decision of the United States Board of Tax Appeals, which had become final, there is now due to the plaintiff from the Estate of John P. Paul the sum of $31,352.12, together with interest thereon at the rate of 1% per month from February 19, 1933,

to October 24, 1933, and at the rate of 6% per annum from that date until fully paid.

III.

That the plaintiff, the United States, has a lien for the unpaid Federal Estate Tax on all the property described in the Bill of Complaint, effective from May 5, 1926, the date of the death of John P. Paul.

IV.

That the lien of the United States is prior in time and superior in right to the liens created by any mortgages executed subsequent to the date of the death of John P. Paul, and to the liens for state, county and city taxes.

V.

That the Federal Estate Tax lien created by Section 315 (a) of the Revenue Act of 1926, is separate and distinct from the general tax lien created by Section 3186 (a), as amended by Section 613 (a), of the Revenue Act of 1928.

VI.

That Section 3186 (b), as amended, requiring the filing of notice of liens created by Section 3186 (a), as amended, does not apply to the Federal Estate Tax liens created by Section 315 (a) of the Revenue Act of 1926.

VII.

That notice of the Federal Estate Tax lien created by Section 315 (a) of the Revenue Act of 1926 need not be recorded or filed in order of said lien to prevail against subsequent purchasers, mortgagees, and judgment creditors.

JOHN C. LEHR,
United States Attorney,

By J. THOS. SMITH,
Assistant United States Attorney.

Amendment to the Requests of United States for Findings of Fact and Law

AMENDMENT TO REQUESTS OF UNITED STATES FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed June 28, 1939)

Comes now the plaintiff, the United States of America, by its attorney, John C. Lehr, United States Attorney, and respectfully requests that in addition to the findings of fact and conclusions of law heretofore requested by the plaintiff, the Court make and enter the following findings of fact:

I.

That John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul, and Charles Paul, deceased, were the children and natural heirs of John P. Paul, deceased, and Lena Paul, deceased.

II.

That the defendants John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul, Charles Paul, deceased, and Florence Paul, administratrix of the estate of Charles Paul, gave no consideration either to John P. Paul or Lena Paul, either in money, property or services for any of the real property involved in this proceeding, but acquired it as donees and heirs of their mother, Lena Paul, the surviving tenant by the entirety of John P. Paul, deceased.

III.

That except for the parcels of real estate conveyed by John P. Paul less than two years prior to his death, neither John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul, Charles Paul, deceased, nor Florence Paul, administratrix of the estate of Charles Paul, acquired any legal or equitable interest in any of the real property involved in this proceeding prior to the death of John P. Paul.

In addition to the above findings of fact, the Court is respectfully requested to enter the following conclusions of law:

Amendment to the Requests of United States for Findings of Fact and Law

I.

That the purported oral promise of John P. Paul to convey an interest in his property to the Paul heirs did not constitute a valid legal or equitable charge on any of the real property involved in this proceeding.

II.

That the testimony purporting to show an oral promise made by John P. Paul to convey an interest in his real property is inadmissable as seeking to establish an interest in real estate by parol testimony and is not material to the controversy involved in this proceeding.

III.

That John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul, Charles Paul, deceased, and Florence Paul, administratrix of the estate of Charles Paul, were not purchasers for value of any of the real property involved in this proceeding.

IV.

That the lien of the United States for unpaid federal estate taxes due from the estate of John P. Paul is paramount and superior to any and all rights or interest held, or claimed to be held, by the Paul children in any of the real property involved in this proceeding.

JOHN C. LEHR,
United States Attorney.
By J. THOMAS SMITH,
Assistant U. S. Attorney.

MOTION OF UNITED STATES FOR DECREE

(Filed October 17, 1938)

Comes now the plaintiff by its attorney, John C. Lehr, United States Attorney, and upon all the pleadings and all the evidence respectfully moves that this Court enter a Decree ordering and determining:

1. That there is due to the plaintiff from the Estate of John P. Paul the sum of $31,352.12, together with interest thereon at the rate of 1% per annum from February 19, 1933, to October 24, 1933, and at the rate of 6% per annum from that date until fully paid.

2. That the United States has a lien for unpaid estate taxes upon all the property described in the Bill of Complaint, effective from May 5, 1926, and that said lien is prior and superior to the liens of any subsequent mortgagees and to the liens for local taxes.

3. That the United States Marshal offer the real estate involved for sale at public auction, with instructions to first offer each parcel of real estate separately, and sell the same to the highest bidder. Except for those parcels which were mortgaged prior to the death of John P. Paul, all the said parcels of real estate are to be sold free and clear of any and all encumbrances, including local taxes. After the payment of the costs of said sale, the proceeds shall be applied to the satisfaction of the claims of the United States for Federal estate taxes, the balance to be applied in accordance with the Court's determination of the junior equities.

JOHN C. LEHR,
United States Attorney,

By J. THOMAS SMITH,
Assistant United States Attorney.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed August 12, 1940)

This Court hereby makes findings of fact and conclusions of law as follows:

Findings of Fact

1. This is a civil suit, in equity, seeking the foreclosure of a Federal estate tax lien arising under the laws of the United States, providing for internal revenue and the collection thereof; plaintiff being a corporation sovereign and body politic, and the defendants being the heirs and assignees of John P. Paul, deceased, and their assignees and mortgagees, and the taxing authorities of the State of Michigan.

2. John P. Paul, a resident of the City of Detroit, Wayne County, Michigan, died intestate on May 5, 1926, leaving heirs as follows: Lena Paul, his widow, and John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney T. Paul, Amelia L. Paul and Charles P. Paul, his children.

3. That Lena Paul, widow of said John P. Paul, died intestate on February 18, 1931; that Charles P. Paul died prior to the institution of this suit, leaving no children, and that the defendant Florence H. Paul, his wife and sole heir, was appointed administratrix of the Estate of Charles P. Paul by the Probate Court of Wayne County, Michigan, on the 16th day of December, 1931.

4. That on or about July 5, 1927, Lena Paul, describing herself as "widow of John P. Paul and joint-owner with him of all his properties," executed and filed in the office of the Collector of Internal Revenue a Federal estate tax return for the estate of said John P. Paul, deceased, reporting a gross estate of $492,902.00, deductions of $329,823.49, a net estate of $164,078.51, and a tax liability of $3,450.00, which was duly paid.

5. That the Commissioner of Internal Revenue notified said Lena Paul by letter dated March 14, 1930, addressed to "Lena

Paul, beneficiary, Estate of John P. Paul," of a proposed deficiency in estate tax in the sum of $23,271.84, and advised her of her right to file an appeal with the United States Board of Tax Appeals.

6. That on or about May 10, 1930, an appeal entitled "Appeal of Estate of John P. Paul, Lena Paul, beneficiary, Docket No. 48933" was filed with the United States Board of Tax Appeals.

7. That on November 4, 1932, said United States Board of Tax Appeals entered an order in connection with the appeal of the Estate of John P. Paul, determining that there was an estate tax deficiency due plaintiff in the sum of $23,271.84.

8. That no proceedings were had or appeal taken from said order of the Board of Tax Appeals entered on November 4, 1932, determining the Federal estate tax liability of said estate of John P. Paul, deceased.

9. That in accordance with the applicable provisions of revenue laws of the United States, interest on said deficiency of $23,271.84 due from the Estate of John P. Paul, deceased, accrued at the rate of six per cent (6%) per annum from May 5, 1927, to February 19, 1933; and that said interest on the deficiency to February 19, 1933, amounted to $8,080.28.

10. That on February 19, 1933, the Commissioner of Internal Revenue duly assessed against the Estate of John P. Paul, deceased, said deficiency in the principal amount of $23,271.84 on account of said estate tax liability as finally determined by the United States Board of Tax Appeals, together with interest on said deficiency in the sum of $8,080.28.

11. That no part of said tax deficiency or interest has been paid.

12. That at the time of the death of John P. Paul he, together with his wife, Lena Paul, owned and held legal title to a tenancy by the entirety in all the parcels of real estate described in the bill of complaint, except parcels numbered 2a,

4, 21, 25, 35, 36, and parcels 40 to 47 inclusive, as numbered in the bill of complaint filed in this cause.

13. That at the time of the death of John P. Paul he, together with his wife, Lena Paul, owned and held land contracts covering parcels numbered 2a, 4, 21, 25, 35 and 36, as numbered in the bill of complaint. These parcels were listed as part of the gross estate of John P. Paul in the Federal Estate Tax return filed by Lena Paul. Deeds to each of these parcels, except parcel No. 36, were later delivered by the vendors in the contract to Lena Paul, the widow, or to certain of the children of John P. Paul, in accordance with the terms of the contract.

14. That the land contract covering parcel 36 as numbered in the bill of complaint is now held by the Paul heirs. There remains a balance of $1,900.00 on the purchase price due to Harry E. Barnard, the vendor.

15. That parcels numbered 40 to 47 inclusive, as numbered in the bill of complaint, were conveyed by John P. Paul and Lena Paul, his wife, to certain of their children within two years before the date of the death of John P. Paul. These parcels were treated by the Commissioner of Internal Revenue as part of the gross estate of John P. Paul, as property conveyed in contemplation of death. Said conveyances were made on the dates and in the manner hereinafter described:

Parcels 40, 41, 42, 43, and 44 were conveyed by John P. Paul and Lena Paul, his wife, to Nettie Paul, unmarried, by Warranty Deed dated June 22, 1925.

Parcel 45 was conveyed by John P. Paul and Lena Paul, his wife, to Amelia L. Paul, single, by Warranty Deed dated July 10, 1925 and recorded October 20, 1925.

Parcel 46 was conveyed by John P. Paul to Amelia L. Paul by Warranty Deed dated May 1, 1925 and recorded June 16, 1925.

Parcel 47 was conveyed by John P. Paul and Lena Paul, his wife, to Nettie B. Paul by Warranty Deed dated October 5, 1925 and recorded June 4, 1926.

16. On February 13, 1931 Lena Paul, widow of John P. Paul, executed an instrument granting to John W. Paul, Frederick P. Paul, Nettie B. Paul, Riney F. Paul, Amelia L. Paul, and Charles P. Paul, children of John P. Paul, all her right, title and interest in any and all real estate standing in her name or in which she had any interest by purchase, inheritance, right of succession or otherwise, located and being in the County of Wayne and State of Michigan (except the homestead property known as 207 King Avenue, Detroit, Michigan). This instrument was recorded on June 20, 1931 in Liber 3613 of Deeds, on page 291, in the office of the Register of Deeds for Wayne County, Michigan. On the same date, February 13, 1931, Lena Paul, widow of John P. Paul, executed a deed conveying the homestead property located at 207 King Avenue, Detroit, Michigan, hereinafter referred to in Parcel 19, as numbered in the bill of complaint, to John W. Paul and Nettie B. Paul, present record owners of the property. Said deed was recorded on September 28, 1933 in Liber 4012 of Deeds, on page 173, in the office of the Register of Deeds for Wayne County, Michigan.

17. That by virtue of mesne conveyances between the Paul children, by Quit Claim deeds dated September 27, 1933 and April 12, 1934, record title to parcels numbered 2a, 3, 5, 6, 8, 12, 14, 15, 16, 17, 21, 22, 23, 24, 26, 27, 28, 29, 30, 32, 33, 34, 35, 37, 39, 42, 43, 44, 45, 47, 48, 49, and 50, as numbered in the bill of complaint, is now held by Frederick H. Paul and Ruby, his wife, as joint tenants.

18. That by virtue of mesne conveyances between the Paul children by Quit Claim deeds dated September 27, 1933, record title to parcels numbered 4, 9, 10, 11, 18, 20, 21 and 38, as numbered in the bill of complaint, is now held by John W. Paul, single, and Nettie B. Paul, unmarried.

19. The parcels of real estate numbered 2a, 3, 5, 6, 12, 13, 14, 15, 16, 17, 21, 22, 24, 25, 26, 27, 28, 30, 33, 37, 39, 45, 46, 48 and 49 in the bill of complaint are not mortgaged or otherwise encumbered, except for Federal, state, county and city taxes as hereinafter stated. The mortgage on parcel number 45, alleged in the bill of complaint to have been made to the Union Investment Company for $3,000.00 on August 18, 1934 and recorded on August 30, 1934 in Liber 2747, at page 609 of Wayne County records, was discharged on March 11, 1935. The defendant, the Union Investment Company, no longer has any interest in this property and is subject to no liability for costs or otherwise, to the plaintiff or to the other parties to this cause, arising out of this controversy.

20. The following parcels of real estate, as numbered in the bill of complaint, were mortgaged before the death of John P. Paul, in the amounts and on the dates hereinafter stated.

Parcel 9 was mortgaged to the Detroit Bank for $35,000.00 on September 22, 1924, said mortgage being recorded September 23, 1924 in Liber 1371, page 118 of Mortgages, Wayne County Records. This mortgage was foreclosed and sold by Sheriff's deed dated May 18, 1934. It was bid in by the Detroit Bank for $51,298.68. The total amount due at that date, including principal, interest and advances made by the mortgagee, was $51,298.68. Under the Michigan Moratorium Law the equity of redemption under this foreclosure has been extended to November 1, 1938, and the parcel is now being held and operated by Ernest H. King, receiver. At the time of the sale the principal amount due was $17,446.00. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $29,963.54. The Detroit Bank has received no payments from the receiver.

Parcel 18 was mortgaged on June 8, 1923, to Edward H. Rogers for the sum of $10,000.00, said mortgage being recorded June 9, 1923 in Liber 1210, page 412 of Mortgages, Wayne County Records. The principal amount due under this

mortgage is $10,000.00, together with interest from July 1, 1932.

Parcel 19 was mortgaged to George S. Hickey for $12,000.00 on March 1, 1920, by a mortgage recorded March 15, 1920 in Liber 970 of Mortgages, page 360, Wayne County Records. This mortgage is now owned by T. Paul Hickey and Julia Blanche Hickey by her guardian, Howard J. Ely, heirs at law of George S. Hickey, deceased. The present amount due under said mortgage is $12,000.00, together with unpaid interest of $1,915.00 to July 1, 1938.

Parcel 20 was mortgaged to the Detroit Bank on April 24, 1920, by mortgage recorded May 4, 1920 in Liber 986, page 400 of Mortgages, Wayne County Records. The mortgage was foreclosed and sold by Sheriff's deed, dated May 18, 1934, and was bid in by the Detroit Bank for $1,791.74, the total amount due at that time, including principal, interest and advances made by the mortgagee. Under the Michigan Moratorium Law the equity of redemption under this foreclosure has been extended to November 1, 1938, and the parcel is now being held and operated by Ernest H. King, receiver. At the time of the sale the principal amount due was $810.20. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $916.59. The Detroit Bank has received no payments from the receiver.

Parcel 23 is subject to a mortgage of $6,000.00, made to E. C. Childes of Windsor, Ontario. The present amount due under this mortgage is $6,000.00 principal, together with interest from January 1, 1932.

Parcel 29 was mortgaged to the Detroit Trust Company on November 6, 1907, in the amount of $2,000.00, by mortgage recorded November 7, 1907 in Liber 502, page 204 of Mortgages, Wayne County Records. The present amount due under this mortgage is $2,000.00 principal, together with interest from November 1, 1935.

Parcel 24 was mortgaged to the Union Trust Company on December 1, 1923, in the amount of $6,000.00, by mortgage recorded December 4, 1923 in Liber 1305, page 180 of Mortgages, Wayne County Records. This mortgage is now held by E. B. Finley, Jr., M. E. Bowlus and E. A. Edwards, liquidating trustees under declaration of trust recorded in Wayne County in Liber 4166 of Deeds, page 305. At present the amount due under this mortgage is $3,962.30, together with interest from May 1, 1938.

Parcel 35 was mortgaged to Peoples Wayne County Bank on April 16, 1925, in the amount of $4,500.00, by mortgage recorded April 17, 1925 in Liber 1478, page 64 of Mortgages, Wayne County Records. This mortgage was foreclosed and the property bid in by B. C. Schram, the then holder of the mortgage, and sold by Sheriff's deed dated July 14, 1937. At the time of the sale the total amount due under this mortgage was $2,808.33.

Parcels 40, 41, 42 and 43 were mortgaged to the Detroit Trust Company on July 29, 1903, in the amount of $14,350.00, by mortgage recorded July 31, 1903 in Liber 441, page 345 of Mortgages, Wayne County Records. The present amount due under said mortgage is $14,275.65, together with interest from July 1, 1935.

Parcel 44 was mortgaged to the Detroit Trust Company by mortgage dated November 6, 1907, in the amount of $1,000.00, by mortgage recorded November 7, 1907 in Liber 502, page 202. The present amount due under this mortgage is $1,000.00 principal, together with interest from November 1, 1935.

21. The following parcels of real estate, as numbered in the bill of complaint, are subject to mortgages executed by Lena Paul, widow of John P. Paul and surviving tenant by the entirety, or by the Paul children, after the death of John P. Paul, in the amounts and on the dates hereinafter described. The mortgages made to the Detroit Bank, as hereinafter described, were foreclosed by advertisement and sold at Sheriff's

sale on May 18, 1934. The properties were bid in by the Detroit Bank for the total amount of indebtedness then due, including principal, interest and advances made by mortgagee. Upon application of the equity owners the equity of redemption under these foreclosures has been extended, under the Michigan Moratorium Law, to November 1, 1938, and Ernest H. King was appointed receiver of the properties until that date. The receiver has made no payments to the Detroit Bank since his appointment.

Parcel 1 was mortgaged to the Detroit Bank in the amount of $20,000.00 on July 23, 1930, by mortgage recorded July 25, 1930 in Liber 2506, page 207 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $35,555.79. At the time of sale the principal amount due was $18,953.50. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $13,689.35. The Detroit Bank also advanced $84.00 for insurance.

Parcel 2 was mortgaged to the Detroit Bank on February 8, 1927, in the amount of $18,000.00, by mortgage recorded February 15, 1927 in Liber 1898, page 1 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $16,793.77, the total amount due at that time, including principal, interest and advances made by the mortgagee. At the time of sale the principal amount due was $11,570.79. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $3,204.79. The Detroit Bank also advanced $20.50 for insurance.

Parcel 4 was mortgaged on October 9, 1926, to the Detroit Bank in the amount of $20,000.00, by mortgage recorded in Liber 1927, page 387 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $20,875.23, the total amount due at that time, including principal, interest and advances made by the mortgagee. At the time of the sale the principal amount due was $15,129.20. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the

Sheriff's sale, totalled $3,404.95. The Detroit Bank also advanced $34.00 for insurance. Legal title to this parcel was never held by John P. Paul, who had only a contract right at the time of his death. Legal title was conveyed to Lena Paul on September 21, 1926.

Parcel 7 was mortgaged to the Detroit Bank on October 8, 1927, in the amount of $15,000.00, by mortgage recorded November 7, 1927 in Liber 2041, page 136 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $15,258.88. At the time of sale the principal amount due was $12,913.45. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $341.28.

Parcel 8 was mortgaged to the Detroit Bank on June 22, 1931, in the amount of $28,000.00, by mortgage recorded June 30, 1931 in Liber 2601, page 272 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $37,288.36. At the time of sale the principal amount due was $28,000.00. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $4,235.58. The Detroit Bank also advanced $198.30 for other items.

Parcel 10 was mortgaged to the Detroit Bank on October 8, 1927, in the amount of $25,000.00, by mortgage recorded October 12, 1927 in Liber 2027, page 356 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $27,064.61. At the time of sale the principal amount due was $21,405.61. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $2,213.06.

Parcel 11 was mortgaged to the Detroit Bank on August 1, 1929, in the amount of $18,000.00, by mortgage recorded August 5, 1929 in Liber 2363, page 440 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $20,324.05. At the time of sale the principal amount due was $14,436.30. Taxes for years subsequent to 1929, ad-

vanced by the Detroit Bank before the Sheriff's sale, totalled $3,348.86.

Parcel 31 was mortgaged to the Detroit Bank in the amount of $13,400.00, on July 11, 1928, by mortgage recorded July 16, 1928 in Liber 2171, page 528 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $14,257.34. At the time of sale the principal amount due was $10,842.70. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $1,590.41.

Parcel 32 was mortgaged to the Detroit Bank on July 11, 1928, in the amount of $9,000.00, by mortgage recorded July 16, 1928 in Liber 2171, page 525 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $9,467.99. At the time of sale the principal amount due was $7,317.70. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $944.87.

Parcel 38 was mortgaged to the Detroit Bank on July 16, 1928, in the amount of $12,500.00, by mortgage recorded July 19, 1928 in Liber 2174, page 76 of Mortgages, Wayne County Records. The total amount bid at the Sheriff's sale was $13,220.43. At the time of sale the principal amount due was $10,121,70. Taxes for years subsequent to 1929, advanced by the Detroit Bank before the Sheriff's sale, totalled $1,434.08.

Parcel 47 was mortgaged to Peninsular State Bank on July 30, 1929, in the amount of $5,000.00, by mortgage recorded July 31, 1929 in Liber 2360, page 435 of Mortgages, Wayne County Records. This mortgage was assigned to the First National Bank-Detroit and was foreclosed on March 20, 1936, and bid in by the First National Bank-Detroit for the sum of $4,400.00. There was due at the time, on account of the mortgage, $5,272.97. The Sheriff's deed is now held by E. C. Schram, Receiver of the First National Bank-Detroit.

Parcel 50 was mortgaged to Security Trust Company on October 12, 1926, in the amount of $2,500.00, by mortgage recorded October 14, 1926 in Liber 1828, page 429 of Mort-

gages, Wayne County Records. This mortgage is now in the hands of the Detroit Trust Company and the present amount due thereunder is $1,937.50, together with interest thereon from November 2, 1935.

22. The Estate of John P. Paul was not probated and there are no assets other than the above mentioned parcels of real estate, from which the Federal estate tax in question can be collected.

23. The unpaid state, county and city taxes and assessments assessed against the above mentioned parcels are set forth in schedules attached to the stipulation in this cause and marked "Exhibit C," and are hereby made a part of these findings of fact. These unpaid taxes are for different years and on different pieces of property, none of which extend any further back than 1930.

24. Tax certificates for city taxes for the year 1930 are owned and held by the defendant Mary Emily Wiltsie Field. The face amounts of the outstanding certificates are shown on supplementary stipulation attached to the stipulation in this cause and marked "Exhibit D," which is hereby made a part of these findings of fact.

25. That at the time that the Detroit Bank loaned money upon the security of mortgages covering Parcels 1, 2, 4, 7, 8, 9, 10, 11, 20, 31, 32 and 38, respectively, and at the times it acquired mortgages on said parcels, it had no actual knowledge that plaintiff had or claimed to have any claim, lien or charge on said parcels with respect to estate taxes payable by the Estate of John P. Paul, deceased.

26. That The Detroit Bank acquired mortgages covering said parcels mentioned in the paragraph above, in good faith, for value, and without actual knowledge that plaintiff had or claimed to have any lien, claim or charge on any of said parcels of property.

27. That at the time the Detroit Trust Company loaned money upon the security of mortgage covering Parcel 50, and

at the time it acquired mortgage on that parcel, it had no actual knowledge plaintiff, United States of America, had or claimed to have any lien upon said property.

28. That notice of Federal Estate Tax lien herein sought to be foreclosed by plaintiff was first filed by it in the office of the Register of Deeds for Wayne County, Michigan, on December 26, 1935.

29. That notice of the lien herein sought to be foreclosed and filed with the Register of Deeds as above described, did not contain a specific description of the property against which said notice of lien was filed.

30. That John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul and Charles Paul, deceased, were the children and natural heirs of John P. Paul, deceased, and Lena Paul, deceased.

31. That the defendants John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul, Charles Paul, deceased, and Florence Paul, administratrix of the estate of Charles Paul, gave no consideration either to John P. Paul or Lena Paul, either in money, property or services for any of the real property involved in this proceeding, but acquired it as donees and heirs of their mother, Lena Paul, the surviving tenant by the entirety of John P. Paul, deceased.

32. That except for the parcels of real estate conveyed by John P. Paul less than two years prior to his death, neither John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul, Charles Paul, deceased, nor Florence Paul, administratrix of the estate of Charles Paul, acquired any legal or equitable interest in any of the real property involved in this proceeding prior to the death of John P. Paul.

Conclusions of Law

1. The Court has jurisdiction of the parties and subject matter of this cause.

2. By virtue of the assessment made by the Commissioner of Internal Revenue, on February 19, 1933, pursuant to a decision of the United States Board of Tax Appeals, which had become final, there is now due to the plaintiff from the Estate of John P. Paul the sum of $31,352.12, together with interest thereon at the rate of 1% per month from February 19, 1933, to October 24, 1933, and at the rate of 6% per annum from that date until fully paid.

3. That the plaintiff, the United States, has a lien for the unpaid Federal Estate Tax on all the property described in the bill of complaint, effective from May 5, 1926, the date of the death of John P. Paul.

4. That the lien of the United States is prior in time and superior in right to the liens created by any mortgages executed subsequent to the date of the death of John P. Paul, and to the liens for state, county and city taxes.

5. That the Federal Estate Tax lien created by Section 315 (a) of the Revenue Act of 1926, is separate and distinct from the general tax lien created by Section 3186 (a), as amended by Section 613 (a) of the Revenue Act of 1928.

6. That Section 3186 (b), as amended, requiring the filing of notice of liens created by Section 3186 (a), as amended, does not apply to the Federal Estate Tax liens created by Section 315 (a) of the Revenue Act of 1926.

7. That notice of the Federal Estate Tax lien created by Section 315 (a) of the Revenue Act of 1926 need not be recorded or filed in order for said lien to prevail against subsequent purchasers, mortgagees, and judgment creditors.

8. That the lien of the plaintiff, United States of America, is inferior and subordinate to mortgages on parcels 9, 18, 19, 20, 23, 24, 29, 35, 40, 41, 42, 43 and 44, inasmuch as these mortgages were placed upon the property prior to the death of John P. Paul.

9. That the purported oral promise of John P. Paul to convey an interest in his property to the Paul heirs did not constitute a valid, legal or equitable charge on any of the real property involved in this proceeding.

10. That the testimony purporting to show an oral promise made by John P. Paul to convey an interest in his real property is inadmissable as seeking to establish an interest in real estate by parol testimony and is not material to the controversy involved in this proceeding.

11. That John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul, Charles Paul, deceased, and Florence Paul, administratrix of the estate of Charles Paul, were not purchasers for value of any of the real property involved in this proceeding.

12. That the lien of the United States for unpaid federal estate taxes due from the estate of John P. Paul is paramount and superior to any and all rights or interests held, or claimed to be held, by the Paul children in any of the real property involved in this proceeding.

13. That the plaintiff, United States of America, is entitled to a decree foreclosing its lien against all of the property described in said bill of complaint, except parcels 9, 18, 19, 20, 23, 24, 29, 35, 40, 41, 42, 43, and 44.

14. That the defendants are entitled to have the assets marshaled and those parcels of real estate which are unencumbered except for taxes and which are owned by persons who are direct or indirect beneficiaries of the estate of John P. Paul, deceased, to wit: Parcels 2a, 3, 5, 6, 12, 13, 14, 15, 16, 17, 21, 22, 24, 25, 26, 27, 28, 30, 33, 37, 39, 45, 46, 48, and 49, be sold first to satisfy the claim of the plaintiff; and Parcels 1, 2, 4, 7, 8, 10, 11, 31, 32, 38, 47, and 50 be not sold until that part held by the beneficiaries of John P. Paul has been sold and it is found that the proceeds from such are not sufficient to satisfy the plaintiff's claim, in which event those parcels above mentioned shall then be sold.

15. Plaintiff shall submit a decree in conformity with the findings.

EDWARD J. MOINET,
United States District Judge

STIPULATION FOR THE AMENDMENT OF FINDINGS OF FACT

(Filed December 9, 1940)

IT IS HEREBY STIPULATED by and between the undersigned parties, by their respective attorneys, that that parcel of property described as:

> Lot 69 of Williams Subdivision of Park Lots 1, 2, 3 and 4, according to the plat thereof recorded in Liber 1, page 39, of Plats, Wayne County Records,

which is included in the original stipulation of facts and findings of fact as a part of Parcel No. 5, as numbered in the Bill of Complaint, has been owned since 1912 by the defendant Nettie Paul; that said parcel was not the property of the decedent John P. Paul on the date of his death; that it was not a part of his gross estate from which the federal estate taxes in question arise, and that the plaintiff, the United States, has no lien upon said lot.

IT IS FURTHER STIPULATED that the findings of fact entered by the Court on August 12, 1940, may be amended to state that said Lot 69 from Parcel 5, as numbered in the Bill of Complaint, was not a part of the gross estate of the decedent John P. Paul at the time of his death.

The Court is hereby respectfully requested to enter an order so amending the findings of fact.

JOHN C. LEHR,
United States Attorney

CARL J. MAROLD,
Assistant United States Attorney,
Attorneys for Plaintiff

CHARLES A. LORENZO,
Attorney for John W. Paul, Frederick P. Paul, Ruby H. Paul, his wife, Nettie Paul, Riney Paul, and Amelia Paul.

ORDER AMENDING FINDINGS OF FACT

(Filed December 9, 1940)

At a session of the above Court held in the Federal Building, Detroit, Michigan, on the 9th day of December, A. D. 1940.

PRESENT: Honorable Edward J. Moinet, United States District Judge.

Upon stipulation of the interested parties, IT IS HEREBY ORDERED, that the findings of fact entered by this Court on August 12, 1940, be, and the same hereby are, amended to include the following finding:

That parcel of Real Estate described as:

> Lot 69 of Williams subdivision of Park Lots 1, 2, 3 and 4, according to the plat thereof recorded in Liber 1, page 39, of Plats, Wayne County Records,

included as a part of Parcel 5, as numbered in the Bill of Complaint, has been owned by the defendant Nettie Paul since 1912; that said lot was not the property of the decedent John P. Paul at the time of his death, formed no part of the gross estate of the decedent John P. Paul, and the plaintiff has no lien upon said lot on account of unpaid estate taxes due from the estate of John P. Paul.

EDWARD J. MOINET,
United States District Judge.

COMPUTATION OF AMOUNT OF JUDGMENT

(Filed December 9, 1940)

Estate Tax assessed Feb. 19, 1933	$23,271.84	
Interest Assessed Feb. 19, 1933	8,080.28	
Total Tax & Interest Assessed	$31,352.12	$31,352.12
Interest on $31,352.12 at 1% per month from Feb. 19, 1933 to October 24, 1933		2,559.71
Interest on $31,352.12 at 6% per year from October 24, 1933 to December 9, 1940		13,401.95
Total Tax and Interest to date of entry of Decree, as per Conclusion of Law No. 2		$47,313.78

DECREE

(Entered December 9, 1940)

This cause came on to be heard before the Court on November 14, 1938, and again on April 17, 1939. A stipulation of facts, signed by the attorneys for all the parties was filed, testimony of witnesses was introduced, written briefs were submitted, and the Court took the case under advisement.

Upon consideration of the pleadings, the stipulation of facts, the evidence introduced, the briefs, and the arguments of counsel, and the Court being fully advised of the premises, in accordance with the findings of fact and conclusions of law heretofore filed,

IT IS ORDERED, ADJUDGED, AND DECREED that there is now due and owing to the plaintiff, United States of America, from the Estate of John P. Paul, the sum of $47,313.78, together with interest thereon at the legal rate from this date until paid, as federal estate taxes and interest arising from said Estate; that the plaintiff, United States of America, has a lien, for said unpaid federal estate taxes and interest on all the real property described in the bill of complaint, except Parcel 50 and Lot 69 of Parcel 5, as numbered in the bill of complaint, effective from May 5, 1926, the date of the death of John P. Paul; that the said lien of the United States of America is prior in time and paramount and superior in right to any and all liens in favor of the defendant mortgagees created by any of the mortgages on parcels Nos. 1, 2, 4, 7, 8, 10, 11, 31, 32, 38, and 47, as numbered in the bill of complaint, since said mortgages were executed subsequent to May 5, 1926; that said lien of the United States of America upon all of the property involved in this proceeding is prior in time and paramount and superior in right to the liens of the defendants, State of Michigan, the County of Wayne, the City of Detroit, and the City of Highland Park, for unpaid state, county, or city real estate taxes, and to the liens or

rights of the holders of tax certificates or tax deeds purchased from the City of Detroit; that defendants, John W. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul, and Florence Paul, administratrix of the Estate of Charles Paul, deceased, were not purchasers for value of any of the real estate involved in this proceeding, but derived their title to said property as heirs of John P. Paul and Lena Paul, his wife, and that the said lien of the United States upon all the property involved in this cause is paramount and superior to any and all rights or interests held or claimed to be held by said defendants, John W. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul, and Florence Paul, administratrix of the estate of Charles Paul, deceased, in any of the real estate involved in this proceeding; that the lien of the plaintiff, United States of America, upon the real estate described in the bill of complaint as parcels numbered 9, 18, 19, 20, 23, 34, 29, 35, 40, 41, 42, 43, and 44 is inferior and subordinate to the liens created by the mortgages in favor of the defendant mortgagees and executed upon these parcels prior to the death of John P. Paul.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that unless the said sum of money herein found to be due to the plaintiff is paid within ten days from the entry of this decree, an order of sale shall issue to the United States Marshal for this District commanding him to advertise and sell, at public sale, to the highest bidder or bidders, the parcels of real estate hereinafter described. Said sale shall be held at the south entrance of the Wayne County Building in the City of Detroit, Michigan. The Marshal shall give public notice of the time and place of said sale by publication of notices of such sale in one newspaper, printed, regularly issued and having a general circulation in said county, once each week for four successive weeks beginning not less than twenty-eight days prior to the date of sale. Said notice of sale shall contain a description of the property to be sold and otherwise conform to the practice of this Court and the law relating to judicial

sales. The plaintiff or any other of the parties to this suit may become purchaser or purchasers at such sale and upon confirmation of said sale by this Court the said Marshal shall execute a deed or deeds to the purchaser or purchasers of said property at said sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that said sale shall be conducted in the following manner. Said Marshal shall first offer for sale separately in the order named the parcels of real estate numbered in the bill of complaint as 2a, 3, 5, 6, 12, 13, 14, 15, 16, 17, 21, 22, 24, 25, 26, 27, 28, 30, 33, 37, 39, 45, 56, 58, and 49, described as follows:

Parcel 2a. Lot 32 Houghton Section of the Brush Farm, North of Gratiot Avenue, as subdivided into lots by J. Abrey, according to the plat thereof recorded in Liber 7, page 174, of City records in the office of the Register of Deeds for the County of Wayne. Also known as 402-6 Elizabeth Street, East, the southeast corner of Elizabeth and Brush Streets, and 412 to 14 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 3. Lots 6, 7, and 8 of the South part of Out Lot 174 Lambert Beaubien Farm, according to the plat thereof recorded in Liber 1, page 22 of Plats, Wayne County Records. Also known as 424 Elizabeth Street, East, and 428-34 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 5. Lots 67, 68 and 69 of Williams Subdivision of Park Lots 1, 2, 3, and 4, according to the plat thereof recorded in Liber 1, page 39, of Plats, Wayne County Records. Also known as 215-219 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 6. The East 30 feet of Lot 28, Houghton Section of the Brush Farm, north of Gratiot Avenue, as subdivided into lots by J. Abrey, according to the plat thereof recorded in Liber 7, page 174, of City Records in the office of the Register of Deeds for the County of Wayne. Also known as 264 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 12. Lots 23, Block 31, of Fisher & Shearer's subdivision of Park Lots 30 and 31, according to the plat thereof recorded in Liber 1, page 7 of Plats, Wayne County Records. Also known as 265 Canfield Avenue, City of Detroit, Michigan.

Parcel 13. Rear North 38 feet of the South 76 feet of Lots 42 and 43 of Hubbard & King's Subdivision of Park Lot 46, according to the plat thereof recorded in Liber 6, page 86 of Plats, Wayne County Records. Also known as 6039-41 John R. Street, West side, City of Detroit, Michigan.

Parcel 14. South 38 feet of Lots 42 and 43 of Hubbard and King's Subdivision of Park Lot 46, according to the plat thereof recorded in Liber 6, page 86 of Plats, Wayne County Records. Also known as 6047 John R. Street, West side, City of Detroit, Michigan.

Parcel 15. Lot 104 of P. McGinnis' Subdivision of Lots 1 to 9, inclusive, of McCune's Subdivision of part of fractional Section 31, according to the plat thereof recorded in Liber 4, page 93 of Plats, Wayne County Records. Also known as 286 Baltimore E., Ave., City of Detroit, Michigan.

Parcel 16. Lot 37 Frisbee and Foxen's Subdivision of part of fractional section 31 and Lot 18 of Theodore J. and Denis J. Campau's subdivision of fractional sections 29 and 32, T. 1 S., R. 12 E., according to the plat thereof recorded in Liber 6, page 78 of Plats, Wayne County Records. Also known as 301 Milwaukee Ave., E., City of Detroit, Michigan.

Parcel 17. Lot 77 and the Westerly 1 foot to the rear of Lot 78 of Lowe's subdivision of Lot 1, Quarter Section 44, T. T. A. T., Hamtramck, Wayne County, Michigan, according to the plat thereof recorded in Liber 8, page 26 of Plats, Wayne County Records. Also known as 656 Euclid Ave., E., City of Detroit, Michigan.

Parcel 21. Lot 35, Crane & Wesson's Subdivision of Out Lot 173, Lambert Beaubien Farm, according to the plat thereof recorded in Liber 35, page 201 of Deeds, Wayne

County Records. Also known as 2018-22 Beaubien Street, City of Detroit, Michigan,

Parcel 22. Lot 9, Blocks 2 and 3, Van Dyke Section of the Antoine Beaubien Farm, according to the plat thereof recorded in Liber 1, page 122 of Plats, Wayne County Records. Also known as 548 Vernor Highway, East, City of Detroit, Michigan.

Parcel 24. Lot 113 of Crane & Wesson's Subdivision of the L. Moran Farm, North of Gratiot Avenue, according to the plat thereof recorded in Liber 1, page 125 of Plats, Wayne County Records. Also known as 962 Napoleon Street, City of Detroit, Michigan.

Parcel 25. Lot 42, S. B. Morse's Subdivision of part of Lot 3, North of Gratiot Street, Mullett Farm, Private Claims 7 and 132, according to the plat thereof recorded in Liber 46, page 514 of Deeds, Wayne County Records. Also known as 1336 Alfred Street, City of Detroit, Michigan.

Parcel 26. Lot 47 Miller and Hallock's Subdivision of Lot 9 and part of 10, G. Hunt farm, according to the plat thereof recorded in Liber 5, page 22, of Plats, Wayne County Records. Also known as 3289 Congress Street, City of Detroit, Michigan.

Parcel 27. Lot 11 Wirth's resubdivision of the N. Part of Lot 13, Lieb farm, City of Detroit, Wayne County, Michigan, T. 2 S., R. 12 E., according to the plat thereof recorded in Liber 6, page 83 of plats, Wayne County Records. Also known as 3647 Arndt Street, City of Detroit, Michigan.

Parcel 28. Lot 4, Block 27, of the subdivision of part of James Campau farms, East ½ P. C. 91, according to the plat thereof recorded in Liber 2, Page 18 of Plats, Wayne County Records. Also known as 2253 Watson Street, City of Detroit, Michigan.

Parcel 30. Lot 13, Block 13, of the Plat of Subdivision of the Crane farm, being the rear concession of P. C. 247, between Hancock and Brainard, according to the plat thereof recorded

August 9, 1855, in Liber 60, Page 58, of Deeds, Wayne County Records. Also known as 4438 Fourth Avenue, City of Detroit, Michigan.

Parcel 33. Lot 15, Block 68, and Lot 16, Block 68, of the Cass Western Addition to the City of Detroit, between the Chicago Road and the Grand River Road, according to the plat thereof recorded in Liber 42, pages 138-139, 140 and 141 of Deeds, Wayne County Records. Also known as 2220 Third Street, City of Detroit, Michigan.

Parcel 37. The West 50 feet of Lot 25, Block 94, William L. Woodbridge's Subdivision, Plat of Blocks 93 and 94, and the North part of J. T. Abbott's Lot, Woodbridge Farm, Detroit, Wayne County, Michigan, T. 2 S., R. 12 E., according to the plat thereof recorded in Liber 4, page 82, of Plats, Wayne County Records. Also known as 1528 Perry Street, City of Detroit, Michigan.

Parcel 39. Lot 4 of J. Marr's Subdivision of Lots 40 and 41 and the North 18.5 feet of Lot 39, Thompson Farm, Detroit, Wayne County, Michigan, according to the Plat thereof recorded in Liber 10, Page 94 of Plats, Wayne County Records. Also known as 2903 Twelfth Street, City of Detroit, Michigan.

Parcel 45. Lot 85, Albert Crane's Section of the Thompson Farm, being part of P. C. 227. Late Springwells, now Detroit, Michigan, according to the plat thereof recorded in Liber 1, Page 11, of Plats, Wayne County Records. Also known as 1931 Linden Street, City of Detroit, Michigan.

Parcel 46. Lot 53 and the South 16 feet of Lot 57, of Larned's Subdivision on the Lafferty Farm, according to the plat thereof recorded July 24, 1855, in Liber 60, Pages 2-3 of Deeds, Wayne County Records. Also known as 2515-21 Vermont Street, Detroit, Michigan.

Parcel 48. Lot 232 of Woodruff's Subdivision of Lot 3, Lafferty Farm, P. C. 228, South of Grand River Avenue, according to the plat thereof recorded in Liber 2, Page 32, of

Plats, Wayne County Records. Also known as 1950 Myrtle Street, City of Detroit, Michigan.

Parcel 49. All of Lot 20, and the North 11 feet of Lot 19, Albert Crane's Section of the Labrosse and Baker Farms, being Lots 20 to 33 inclusive of Wesson's Section of the Labrosse and Baker Farms, Detroit, Michigan, according to the plat thereof recorded in Liber 1, Page 123, of Plats, Wayne County Records. Also known as 4123 Sixth Street, City of Detroit, Michigan.

In the event that, after payment of fees and expenses, sufficient money is realized from the sale of one or more of said parcels to satisfy the amount herein found to be due to the plaintiff, United States of America, then further sales will be adjourned until further order of this Court.

If the sale of the above-described parcels of real estate does not produce sufficient money to satisfy the amount herein found to be due to the plaintiff, United States of America, then, and in that event only, the United States Marshal shall at said sale also offer for sale to the highest bidder the parcels of real estate in the order named, numbered in the bill of complaint as 1, 2, 4, 7, 8, 10, 11, 31, 32, 38, and 47, described as follows:

Parcel 1. Lot 73 and the South 9 feet of Lot 70, Houghton Section of the Brush Farm, north of Gratiot Avenue, as subdivided into lots by J. Abrey, according to the plat thereof recorded in Liber 7, page 174, of City Records in the office of the Register of Deeds for County of Wayne. Also known as 1712 Brush Street, the northeast corner of Madison Avenue and Brush Street, City of Detroit, Michigan.

Parcel 2. Lot 31 Houghton Section of the Brush Farm, north of Gratiot Avenue, as subdivided into lots by J. Abrey, according to the plat thereof recorded in Liber 7, page 174, of City Records in the office of the Register of Deeds for the County of Wayne. Also known as 402-6 Elizabeth Street, East, the southeast corner of Elizabeth and Brush Streets,

and 412 to 14 Elizabeth Street, East, City of Detroit, Michigan.

Parcel 4. The North 46.05 feet of Lot 11, of the Plat of Brush subdivision of Park Lot 5 and part of Brush Farm East of and adjoining Park Lots 5 and 4, City of Detroit, made by Edmund Adelaide and Alfred Brush, according to the plat thereof recorded in Liber 45, page 121, of Deeds, Wayne County Records. Also known as 2226-34 Brush Street, the southeast corner of Brush and Montcalm Streets, City of Detroit, Michigan.

Parcel 7. East 60 feet of the West 78.21 feet of Lot 4 of Plat of the subdivision of Lot 13 of the subdivision of Park Lot 5 and part of Brush Farm, according to the plat thereof recorded in Liber 45, page 121, of Deeds, Wayne County Records. Also known as 249-255 Montcalm East, City of Detroit, Michigan.

Parcel 8. The East 55 feet of Lot 4, Plat of Brush subdivision of Park Lot 5 and part of Brush farm east of and adjoining Park Lots 4 and 5, according to the plat thereof recorded in Liber 45, page 121, of Deeds, Wayne County Records. Also known as the Southwest Corner of Vernor Highway and John R Street, City of Detroit, Michigan.

Parcel 10. The South 30 feet of Lots 13 and 14, Winder subdivision of Park Lots 6 and 7, according to the plat thereof recorded in Liber 46, page 561, of Deeds, Wayne County Records. Also known as 2439 John R. Street, West side, City of Detroit, Michigan.

Parcel 11. The North 61.44 feet of Lot 13, and the North 61.44 feet of Lot 14, Block 31, of Fisher & Shearer's subdivision of Park Lots 30 and 31, according to the plat thereof recorded in Liber 1, page 7 of Plats, Wayne County Records. Also known as 4418-20-24 John R. Street, City of Detroit, Michigan.

Parcel 31. Lots 11 and 12, Block 8, of the Plat of Subdivision of the Crane farm, being the rear concession of P. C.

247, between Hancock and Brainard, according to the plat thereof recorded August 9, 1855, in Liber 60, Page 58, of Deeds, Wayne County Records. Also known as 4414-20-22 Fourth Avenue, City of Detroit, Michigan.

Parcel 32. Lot 23, Block 81, Plat of the Subdivision of the Jones farm, north of Grand River Avenue, Detroit, according to the plat thereof recorded in Liber 6, page 7, of Plats, Wayne County Records. Also known as 3486 Fourth Avenue, City of Detroit, Michigan.

Parcel 38. The East 100 feet of Lot 98, McKeown's Subdivision of the South part of Out Lot 96, Woodbridge Farm, City of Detroit, Wayne County, Michigan, T. 2 S., R. 12 E., according to the plat thereof recorded in Liber 3, page 50 of Plats, Wayne County Records. Also known as 3003-7 Trumbull Avenue, City of Detroit, Michigan.

Parcel 47. Lot 28 and the East 12.83 feet of Lot 27, Chidsey's Subdivision of the South half of Lot 4 and the North part of Lot 3, of Quarter Section 4, T. T. A. T. Hamtramck, Wayne County, Michigan, according to the plat thereof recorded in Liber 9, Page 85, of Plats, Wayne County Records. Also known as 13920 John R. Street, the Northeast corner of John R. Street and Gerald Avenue, Highland Park, Michigan.

In the event that sufficient money is realized from the sale of one or more of these parcels of real estate, together with that realized from the other parcels already sold to satisfy the amount herein found to be due the plaintiff, then the sale shall be adjourned until further order of this Court. All of said parcels of real estate described in this decree, which are sold by said Marshal, shall be sold free and clear of any and all incumbrances, including but not limited to all right, title and interest of the defendant mortgages; of the State of Michigan, County of Wayne, and Cities of Detroit and Highland Park for unpaid real estate taxes or special assessments; of the holders of tax titles and tax certificates; and of the plaintiff, United States of America, for federal estate taxes

and interest, or their heirs and assigns, and the liens of said parties shall attach to the proceeds of the sale in the order of their priority as hereinbefore determined.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the said United States Marshal shall out of the proceeds of said sale or sales retain his fees and costs for the holding of said sale, and that he bring the balance of said monies arising from said sale or sales into this Court to abide the further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that jurisdiction of this cause is retained by this Court for the purpose of making such other and further orders or decrees, if any, as may become necessary.

EDWARD J. MOINET,
United States District Judge

Enter
December 9th, 1940.

MOTION TO AMEND FINAL DECREE OF DECEMBER 9, 1940

(Filed March 11, 1941)

The plaintiff, United States of America, hereby moves this Honorable Court to amend the last paragraph appearing on page 3 of the Final Decree which was filed in this cause on December 9, 1940, changing lot numbers erroneously described as numbers 56 and 58 to numbers 46 and 48, as they should have been described, so that as corrected said paragraph will read as follows:

> "IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that said sale shall be conducted in the following manner. Said Marshal shall first offer for sale separately in the order named the parcels of real estate numbered in the bill of complaint as 2a, 3, 5, 6, 12, 13, 14, 15, 16, 17, 21, 22, 24, 25, 26, 27, 28, 30, 33, 37, 39, 45, 46, 48, and 49, described as follows:".

This motion is based upon the files and records of said cause.

Dated this 7th day of March, A. D. 1941.

UNITED STATES OF AMERICA,

JOHN C. LEHR,
United States Attorney

By KENNETH D. WILKINS,
Assistant United States Attorney

ORDER AMENDING DECREE

(Entered March 14, 1941)

At a session of said court continued and held pursuant to adjournment in the District Courtroom in the Federal Building, at the City of Detroit, in said District, on the 14th day of March, A. D. 1941.

PRESENT: Honorable Edward J. Moinet, United States District Judge.

This cause having been brought on to be heard on the Motion to Amend the Final Decree of December 9, 1940, to correct clerical errors appearing therein, and notice having been served upon all parties and there being no opposition, therefore, on motion of the plaintiff,

IT IS HEREBY ORDERED that the last paragraph appearing on page 3 of the Final Decree which was filed in this cause on December 9, 1940, be changed to read as follows:

> "IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that said sale shall be conducted in the following manner. Said Marshal shall first offer for sale separately in the order named the parcels of real estate numbered in the bill of complaint as 2a, 3, 5, 6, 12, 13, 14, 15, 16, 17, 21, 22, 24, 25, 26, 27, 28, 30, 33, 37, 39, 45, 46, 48, and 49, described as follows:"

EDWARD J. MOINET,
United States District Judge.

NOTICE OF APPEAL OF THE DETROIT BANK

(Filed March 4, 1941)

Notice is hereby given that THE DETROIT BANK, (formerly known as The Detroit Savings Bank), a Michigan Banking Corporation, one of the defendants above named, hereby appeals to the United States Circuit Court of Appeals for the Sixth Circuit from a final judgment (styled "Decree") and the whole thereof entered in this action on December 9, 1940, except so much of said judgment as requires that "Said Marshal shall first offer for sale separately in the order named the parcels of real estate numbered in the Bill of Complaint as 2-a, 3, 5, 6, 12, 13, 14, 15, 16,17, 21, 22, 24, 25, 26, 27, 28, 30, 33, 37, 39, 45, 46, 48 and 49."

MILLER, CANFIELD PADDOCK AND STONE,

By EMMETT E. EAGAN,
Attorneys for Appellant and one of the defendants, The Detroit Bank,
3456 Penobscot Building,
Detroit, Michigan.

DATED: March 4, 1941.

BOND ON APPEAL OF THE DETROIT BANK

(Filed March 4, 1941)

KNOW ALL MEN BY THESE PRESENTS: That we, THE DETROIT BANK, a Michigan banking corporation, as principal, and THE TRAVELERS INDEMNITY COMPANY, a Connecticut corporation, as Surety, are held and firmly bound unto the above-named plaintiff, United States of America, in the full and just sum of $250.00 to be paid to the said plaintiff, its successors and assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Executed this 4th day of March, A. D. 1941.

The condition of this obligation is such that:

WHEREAS, on the 9th day of December, A. D. 1940, in the above entitled action between the above-named plaintiff, United States of America, and the several defendants above named, including the above-named defendant, The Detroit Bank, a judgment was rendered against the above-named defendants, including the above-named defendant, The Detroit Bank, and The Detroit Bank has appealed to the United States Circuit Court of Appeals for the Sixth Circuit;

NOW, THEREFORE, if the said The Detroit Bank shall pay the costs, if said appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then the above obligation to be void; otherwise in full force and effect.

THE DETROIT BANK,
A Michigan Banking Corporation,

By R. A. BENGE,
Its Vice-President,

And W. BAINBRIDGE,
Its Assistant Cashier,

Bond on Appeal of The Detroit Bank

THE TRAVELERS INDEMNITY COMPANY,
A Connecticut Corporation,

By ARTHUR G. FOX,
Attorney-in-Fact.

DESIGNATION OF THE DETROIT BANK OF CONTENTS OF RECORD ON APPEAL

(Filed March 4, 1941)

THE DETROIT BANK (formerly known as The Detroit Savings Bank), a Michigan banking corporation, appellant and one of the defendants in the above entitled cause, hereby designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above entitled action:

1. Bill of Complaint filed by plaintiff and appellee.
2. Appearance of The Detroit Bank, appellant and one of the defendants.
3. Answer of The Detroit Bank, appellant and one of the defendants.
4. Reporter's complete transcript of all of the evidence stenographically reported taken, at the trial of said cause, including exhibits (two complete copies of said Reporter's transcript being filed herewith).
5. Stipulation of facts filed in this cause on July 19, 1938.
6. Request of The Detroit Bank, appellant and one of the defendants for findings of fact and conclusions of law.
7. Amendment to the request of The Detroit Bank, appellant and one of the defendants for findings of fact and conclusions of law.
8. Trial Court's findings of fact and conclusions of law.
9. Stipulation for amendment to findings of fact and conclusions of law.
10. Order amending findings of fact and conclusions of law.
11. The judgment (styled "Decree") entered in this cause on December 9, 1940.
12. Computation of amount of judgment.
13. Notice of appeal with date of filing.

Designation of The Detroit Bank of Contents of Record on Appeal

14. Bond on appeal filed by The Detroit Bank, appellant and one of the defendants in this cause.

15. This designation of contents of record on appeal.

16. All calendar entries in this cause.

17. Stipulation between plaintiff and appellee and The Detroit Bank, appellant and one of the defendants, in the above entitled cause, that the portions of the record, proceedings and evidence herein designated constitute a designation for inclusion in the record on appeal of the appeal of The Detroit Bank, appellant and one of the defendants of the complete record in so far as said appeal is concerned and of all proceedings and evidence in this cause pertinent to said appeal.

MILLER, CANFIELD, PADDOCK AND STONE,

By EMMETT E. EAGAN,

Attorneys for The Detroit Bank, Appellant and one of the Defendants,
3456 Penobscot Building,
Detroit, Michigan.

DATED: March 4, 1941.

STIPULATION

(Filed March 4, 1941)

IT IS HEREBY STIPULATED AND AGREED by and between the United States of America, Appellee in the above entitled cause, and The Detroit Bank (formerly known as The Detroit Savings Bank), a Michigan banking corporation, appellant and one of the defendants in the above entitled cause, by and through their respective attorneys, that the "Designation of Contents of Record on Appeal" filed by said The Detroit Bank constitutes a designation for inclusion in the record on appeal of the appeal taken by The Detroit Bank in the above entitled cause of the complete record on appeal in so far as the said appeal of The Detroit Bank is concerned and all of the proceedings and evidence in this cause pertinent to said appeal and that the following:

1. Any and all other papers, records and documents contained in the Court file covering the above entitled cause, which are not mentioned in said "Designation of Contents of Record on Appeal",

2. Proceedings and evidence taken on April 17, 1939 and not stenographically reported,

among other things are not pertinent to said appeal of The Detroit Bank and need not be included in the record on appeal of said appeal of The Detroit Bank.

JOHN C. LEHR,
United States Attorney,
By (S) KENNETH D. WILKINS,
Attorney for Plaintiff and Appellee.
(S) MILLER, CANFIELD, PADDOCK & STONE
MILLER, CANFIELD, PADDOCK & STONE,

By (S) EMMETT E. EAGAN,
Attorneys for The Detroit Bank,
Appellant and one of the Defendants
in the above entitled cause.
3456 Penobscot Building,
Detroit, Michigan.

DATED: March 4, 1941.

NOTICE OF APPEAL OF CITY OF DETROIT AND ALBERT E. COBO

(Filed March 7, 1941)

Notice is hereby given that the City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit, two of the defendants in the above entitled cause, hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit from a final judgment (styled a "Decree") and the whole thereof entered in this action on December 9, 1940.

Dated:
March 6, 1941

PAUL E. KRAUSE,
Corporation Counsel.

JOHN H. WITHERSPOON,
Chief Assistant Corporation Counsel, Attorney for appellants and two of the defendants, City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit.
301 City Hall,
Detroit, Michigan.

BOND ON APPEAL OF CITY OF DETROIT AND ALBERT E. COBO

(Filed March 7, 1941)

THE CITY OF DETROIT and ALBERT E. COBO, TREASURER OF THE CITY OF DETROIT, as Principal, and ROYAL INDEMNITY COMPANY, a corporation organized and existing under the laws of the State of New York, of the city of New York, New York, as Surety; hereby undertake to pay the UNITED STATES OF AMERICA all costs, not to exceed TWO HUNDRED AND FIFTY ($250.00) DOLLARS, which may be taxed against the CITY OF DETROIT AND ALBERT E. COBO, TREASURER OF THE CITY OF DETROIT, in the above entitled cause.

THE CITY OF DETROIT,
By JOHN H. WITHERSPOON,
Acting Corporation Counsel,

ROYAL INDEMNITY COMPANY,
By LEON G. MALLETT,
Attorney-in-Fact.

DESIGNATION OF CITY OF DETROIT AND ALBERT E. COBO OF CONTENTS OF RECORD ON APPEAL

(Filed May 20, 1941)

In addition to the designation of the contents of record on appeal as filed by the Detroit Bank, a Michigan banking corporation, appellant and one of the defendants in the above entitled cause, the defendants City of Detroit, a municipal corporation and Albert E. Cobo, Treasurer of the City of Detroit, hereby designate the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above entitled action:

1. Appearance of the City of Detorit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit, appellants and two of the defendants.
2. Answer of defendants, City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit.
3. Notice of appeal of defendants, City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit, together with date of filing.
4. Bond on appeal filed by the City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit.
5. This designation of contents of record on appeal.

PAUL E. KRAUSE,
Corporation Counsel, and

JOHN H. WITHERSPOON,
Chief Assistant Corporation Counsel
Attorneys for City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit, two of the appellants and defendants.
Address: 301 City Hall,
Detroit, Michigan.

NOTICE OF APPEAL OF JOHN W. PAUL ET. AL.

(Filed March 6, 1941)

Notice is hereby given that John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul and Riney F. Paul, defendants above named, hereby appeal to the Circuit Court of Appeals for the Sixth Circuit, from the Decree entered in this cause on December 9th, 1940.

CHARLES A. LORENZO,
Attorney for Defendants,
John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul and Riney F. Paul.

BOND ON APPEAL OF JOHN W. PAUL, FREDERICK P. PAUL and RUBY H. PAUL, his wife, NETTIE B. PAUL and RINEY F. PAUL

(Filed March 6, 1941)

KNOW ALL MEN BY THESE PRESENTS, That we, John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul and Riney F. Paul, as Principals, and Edward Shelton, as Surety, are held and firmly bound unto the United States of America in the principal sum of Two Hundred Fifty ($250.00) Dollars lawful money of the United States, for the payment of which we do bind ourselves and our heirs, executors, administrators, representatives and assigns, firmly by these presents.

SEALED with our seals and dated at the City of Detroit, County of Wayne and State of Michigan, this 5th day of March, A. D. 1941.

WHEREAS, The above bounden John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul and Riney F. Paul, have appealed to the Circuit Court of Appeals for the Sixth Circuit, from the Decree entered December 9th, 1940 by the Honorable Edward J. Moinet, District Judge of the United States District Court for the Eastern District of Michigan, Southern Division, in cause then and there pending, in Equity No. 7544, instituted by the United States of America, as plaintiff, against the above bounden principals, as defendants, and other defendants: NOW, THEREFORE, the condition of this obligation is such that if the above bounden John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul and Riney F. Paul, shall pay the costs assessed against them, if the appeal is dismissed or the Decree affirmed, or such costs as the Circuit Court of Appeals may award, if the Decree is modified, then this obligation shall be void, otherwise to remain in force.

JOHN W. PAUL L.S.
FREDERICK P. PAUL L.S.
RUBY H. PAUL, L.S.
His Wife.
NETTIE B. PAUL L.S.
RINEY F. PAUL, L.S.
Principals. L.S.
EDWARD SHELTON, L.S.
Surety.

STATE OF MICHIGAN }
COUNTY OF WAYNE } SS:

EDWARD SHELTON, being duly sworn, deposes and says that he is a widower and a resident of the City of Detroit, said County and State; that he is of the financial worth of upwards of Five Hundred ($500.00) Dollars, in real and personal property situate in the City of Detroit, said County and State, over and above all of his debts; that he is the owner in fee simple of real estate situate in the City of Detroit, said County and State, known and described as: The East twenty-five (25) feet of Lot 6, Subdivision of Lots 2, 3 and 4 of the Subdivision of the rear of the Forsyth Farm of the Connors Estate, according to the plat thereof recorded in Liber 1 of Plats, page 219, in the Office of the Register of Deeds for Wayne County, Michigan, otherwise known as 941 Selden Avenue, Detroit, Michigan, which property is improved and has a dwelling thereon yielding a rental of Sixty ($60.00) Dollars per month, and which property is free and clear of all liens and encumbrances, excepting the current city taxes of approximately Sixty ($60.00) Dollars, which he intends paying at an early date.

EDWARD SHELTON

Subscribed and sworn to before
me this 5th day of March, A. D. 1941.

NADINE BROWN,
Notary Public, Wayne County, Michigan.
My commission expires: June 14, 1943.

I hereby accept and approve the foregoing Appeal Bond and the surety thereon.

EDWARD J. MOINET,
District Judge.

Dated: March 6th, 1941.

DESIGNATION OF JOHN W. PAUL ET. AL. OF CONTENTS OF RECORD ON APPEAL

(Filed May 12, 1941)

Now come the above named defendants, John W. Paul, Frederick P. Paul, and Ruby H. Paul, his wife, Nettie B. Paul and Riney F. Paul, by their attorney, Charles A. Lorenzo, and designate the following portions of the record, proceedings and evidence desired by them to be contained in the Record on Appeal:

(1) Original Bill of Complaint;
(2) Their Answers to the Bill of Complaint;
(3) Testimony given by defendants at the hearing;
(4) Stipulation of Facts;
(5) Findings of Fact and Conclusions of Law;
(6) Decree;
(7) Notice of these defendants of filing Notice of Appeal.

CHARLES A. LORENZO,
Attorney for Defendants, John W. Paul, Frederick P. Paul and Ruby H. Paul, his wife, Nettie B. Paul and Riney F. Paul.

NOTICE OF APPEAL OF COUNTY OF WAYNE AND JACOB P. SUMERACKI

(Filed March 8, 1941)

Notice is hereby given that the County of Wayne, a corporate body politic, and Jacob P. Sumeracki, Treasurer for the County of Wayne, two of the defendants in the above entitled cause, hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit from a final judgment (styled a "Decree") and the whole thereof entered in this action on December 9, 1940.

Dated:

March 8, 1941

WILLIAM E. DOWLING,
Prosecuting Attorney,

SAMUEL BREZNER,
Assistant Prosecuting Attorney,
Attorneys for Appellants and two of the defendants, County of Wayne, a corporate body politic, and Jacob P. Sumeracki, Treasurer for County of Wayne,
508 Wayne County Building,
Detroit, Michigan.

BOND ON APPEAL OF JACOB P. SUMERACKI AND THE COUNTY OF WAYNE

(Filed March 8, 1941)

KNOW ALL MEN BY THESE PRESENTS, that we, Jacob P. Sumeracki and the County of Wayne, a corporate body politic, as principals, and Saint Paul-Mercury Indemnity Company of St. Paul, a corporation duly existing by law and having its principal place of business at the City of Detroit in the State of Michigan, as surety, are held and firmly bound and obligated unto the United States of America in the sum of Two Hundred Fifty ($250.00) Dollars to be paid to the United States of America, and to which payment well and truly to be made, the said principals and surety do bind themselves firmly by these presents.

The condition of this obligation is such that whereas the said principals on March 8, 1941 filed a claim of appeal from the decree heretofore entered in the above cause on December 9, 1940.

Now, therefore, if the said principals shall pay all costs awarded or decreed against either or both of them by the court in the said appeal, then this obligation shall be void otherwise to remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals at the City of Detroit this 8th day of March, 1941.

JACOB P. SUMERACKI, L.S.
County of Wayne,

By EDWARD H. WILLIAMS,
Chairman, Board of Wayne County Auditors,

Bond on Appeal of County of Wayne and Jacob P. Sumeracki

SAINT PAUL-MERCURY INDEMNITY CO. OF ST. PAUL,
By CHARLES E. DREIFUS,
Attorney in Fact.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL OF COUNTY OF WAYNE and JACOB P. SUMERACKI, Treasurer of the County of Wayne

(Filed May 23, 1941)

In addition to the designation of the contents of record on appeal as filed by the Detroit Bank, a Michigan banking corporation, appellant and one of the defendants in the above entitled cause, the defendants County of Wayne, a corporate body politic, and Jacob P. Sumeracki, Treasurer of the County of Wayne, hereby designate the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above entitled action:

1. Appearance of the County of Wayne, a corporate body politic, and Jacob P. Sumeracki, Treasurer of the County of Wayne, appellants and two of the defendants.
2. Answer of defendants, County of Wayne, a corporate body politic, and Jacob P. Sumeracki, Treasurer of the County of Wayne.
3. Notice of appeal of defendants, County of Wayne, a corporate body politic, and Jacob P. Sumeracki, Treasurer of the County of Wayne, together with date of filing.
4. Bond on appeal filed by the County of Wayne, a corporate body politic, and Jacob P. Sumeracki, Treasurer of the County of Wayne.
5. This designation of contents of record on appeal.

WILLIAM E. DOWLING,
Prosecuting Attorney.

SAMUEL BREZNER,
Assistant Prosecuting Attorney.
Attorneys for County of Wayne and Jacob P. Sumeracki.
508 County Building
Detroit, Michigan

NOTICE OF APPEAL OF STATE OF MICHIGAN AND JOHN J. O'HARA

(Filed March 8, 1941)

Notice is hereby given that the State of Michigan and John J. O'Hara, Auditor General for the State of Michigan, two of the defendants above named, hereby appeal to the United States Circuit Court of Appeals for the Sixth Circuit, from a final judgment, (styled "decree"), and the whole thereof, heretofore entered in this action on December 9, 1940.

STATE OF MICHIGAN AND JOHN J. O'HARA,
Auditor General for the State of Michigan, Appellants and Defendants,

By: HERBERT J. RUSHTON,
Attorney General for the State of Michigan.

By: PETER E. BRADT,
Assistant Attorney General,
Attorneys for the above named Appellants and Defendants,
Lansing, Michigan.

DATED: March 7, 1941.

BOND ON APPEAL OF THE STATE OF MICHIGAN AND JOHN J. O'HARA, Auditor General

(Filed March 10, 1941)

THE STATE OF MICHIGAN and JOHN J. O'HARA, AUDITOR GENERAL OF THE STATE OF MICHIGAN, as Principal, and NATIONAL SURETY CORPORATION, a New York Corporation, as Surety, hereby undertake to pay to the UNITED STATES OF AMERICA all costs, not to exceed TWO HUNDRED AND FIFTY ($250.00) DOLLARS which may be taxed against the STATE OF MICHIGAN and JOHN J. O'HARA, AUDITOR GENERAL OF THE STATE OF MICHIGAN, in the above entitled cause.

DATED this 10th day of March, 1941.

THE STATE OF MICHIGAN AND
JOHN J. O'HARA,
Auditor General,

By HERBERT J. RUSHTON,
Attorney General,

By AUSTIN C. FRASER,
Assistant Attorney General,

NATIONAL SURETY CORPORATION,
FRANK WETZEL,
Attorney-in-fact.

March 10, 1941

DESIGNATION OF CONTENTS OF RECORD ON APPEAL OF STATE OF MICHIGAN

(Filed May 21, 1941)

Now comes the State of Michigan, one of the appellants in the above entitled cause, and makes the following additional designation of contents of record on appeal:

(1) Appearance of the State of Michigan;

(2) Answer of the State of Michigan;

(3) Claim of appeal of the State of Michigan;

(4) Stipulation which was entered on the record at the hearing of November 4, 1938, when it was orally agreed that the pertinent provisions of the statutes of the State of Michigan and the charter of the City of Detroit would be considered in evidence;

(5) Bond on appeal;

(6) This designation.

HERBERT J. RUSHTON,
Attorney General

EDMUND E. SHEPARD,
Solicitor General

DANIEL J. O'HARA,
Assistant Attorney General

Stipulation Extending Time for Filing Record on Appeal and Docketing the Action

STIPULATION EXTENDING TIME FOR FILING RECORD ON APPEAL AND DOCKETING THE ACTION

(Filed April 9, 1941)

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the plaintiff and appellee, United States of America, and the defendant and appellant, The Detroit Bank, that the time for filing the record on appeal in the above entitled cause with the Circuit Court of Appeals for the Sixth Circuit, and docketing the action, may be extended until May 12, 1941.

MILLER, CANFIELD PADDOCK AND STONE,

By EDWARD S. REID, JR.,
Attorneys for one of defendants and appellant, The Detroit Bank
3456 Penobscot Building,
Detroit, Michigan.

JOHN C. LEHR,

PETER P. GILBERT,

JOHN C. LEHR,
United States District Attorney,
Attorney for plaintiff and appellee.
United States of America,
Federal Building,
Detroit, Michigan.

Dated: April 9, 1941.

Order Extending Time for Filing Record on Appeal and Docketing the Action

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL AND DOCKETING THE ACTION

(Filed April 9, 1941)

At a session of said Court held in the Federal Building, in the City of Detroit, Wayne County, Michigan, on the 9th day of April, A. D. 1941.

PRESENT: Honorable Edward J. Moinet, District Judge.

On reading and filing the Stipulation of counsel for one of the defendants and appellant, The Detroit Bank, and plaintiff and appellee, United States of America, in the above entitled cause, and upon motion of Miller, Canfield, Paddock and Stone, attorneys for defendant and appellant, The Detroit Bank,

IT IS ORDERED that the time for filing the record on appeal in the above entitled cause with the Circuit Court of Appeals for the Sixth Circuit, and docketing the action, may be and the same is hereby extended until the 12th day of May, 1941.

EDWARD J. MOINET,
District Judge

Stipulation Extending the Time for Filing Record on Appeal and Docketing the Action with Respect to The Detroit Bank

STIPULATION EXTENDING THE TIME FOR FILING RECORD ON APPEAL AND DOCKETING THE ACTION WITH RESPECT TO THE DETROIT BANK

(Filed May 6, 1941)

IT IS HEREBY STIPULATED AND AGREED by and between the United States of America, plaintiff and appellee, and The Detroit Bank, one of the defendants and appellant, by and through their respective attorneys, that the time for filing the record on appeal of the appeal of The Detroit Bank in the above entitled cause with the United States Circuit Court of Appeals for the Sixth Circuit, and the docketing of the action, so far as The Detroit Bank is concerned, may be extended to and including May 31, 1941.

MILLER, CANFIELD, PADDOCK & STONE,
By EDWARD S. REID, JR.
Attorneys for one of the defendants and appellant, The Detroit Bank,
3456 Penobscot Building,
Detroit, Michigan.

JOHN C. LEHR,
United States District Attorney
Attorney for plaintiff and appellee United States of America,
Federal Building,
Detroit, Michigan.

Dated: May 6, 1941.

ORDER EXTENDING THE TIME FOR FILING RECORD ON APPEAL AND DOCKETING THE ACTION WITH RESPECT TO THE DETROIT BANK

(Filed May 6, 1941)

At a session of said Court held in the Federal Building in the City of Detroit, Wayne County, Michigan, on the 6th day of May, A. D. 1941.

PRESENT: The Honorable Edward J. Moinet, District Judge.

On reading and filing the Stipulation of counsel for The Detroit Bank, one of the defendants and appellant, and the United States of America, plaintiff and appelle, in the above entitled cause, and upon motion of Miller, Canfield, Paddock and Stone, attorneys for said defendant and appellant, The Detroit Bank—

IT IS ORDERED that the time for filing the record on appeal of the appeal of The Detroit Bank in the above entitled cause with the United States Circuit Court of Appeals for the Sixth Circuit, and the docketing of the action, so far as the said The Detroit Bank is concerned, may be and the same hereby is extended to and including the 31st day of May, A. D. 1941.

EDWARD J. MOINET,
District Judge.

STIPULATION WAIVING COMPARISON OF RECORD

(Filed May 27, 1941)

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the Record on Appeal in the above entitled case as printed be certified and transmitted by the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division to the United States Circuit Court of Appeals for the Sixth Circuit, without Comparison.

JOHN C. LEHR,
United States Attorney,
PETER P. GILBERT,
Assistant United States Attorney.
CARL J. MAROLD,
Special Assistant to the Attorney General of the United States,
Attorneys for Appellee,
By PETER P. GILBERT,
Assistant United States Attorney.

CHARLES A. LORENZO,
Attorney for Appellants,
John W. Paul, Frederick P. Paul, Ruby H. Paul, Nettie B. Paul and Riney F. Paul.

MILLER, CANFIELD, PADDOCK & STONE,
Attorneys for Appellant,
The Detroit Bank,
By EMMETT E. EAGAN.

HERBERT J. RUSHTON,
Attorney General,
EDMUND E. SHEPHERD,
Solicitor General,

DANIEL J. O'HARA,
Assistant Attorney General,
Attorneys for Appellants, State of Michigan and John J. O'Hara, Auditor General for the State of Michigan.
By ARCHIE C. FRASER,
Assistant Attorney General.

WILLIAM E. DOWLING,
Prosecuting Attorney.
SAMUEL BREZNER,
Assistant Prosecuting Attorney,
Attorneys for Appellants, County of Wayne and Jacob P. Sumeracki, Treasurer of the County of Wayne,
By SAMUEL BREZNER,
Assistant Prosecuting Attorney.

PAUL E. KRAUSE,
Corporation Counsel,
JOHN H. WITHERSPOON,
Chief Assistant Corporation Counsel,
Attorneys for Appellants, City of Detroit and Albert E. Cobo, Treasurer of City of Detroit,
By JOHN H. WITHERSPOON,
Chief Assistant Corporation Counsel.

Dated: May 27, 1941.

CERTIFICATE OF CLERK

EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION } ss:

I, George M. Read, Clerk of the United States District Court for said District, do hereby certify that the within and foregoing numbered pages contain a full and complete copy of all papers filed and all proceedings in said cause in accordance with the designation of attorneys for appellants as to contents of record on appeals and in accordance with the stipulation entered into between attorneys for respective parties in said cause, waiving comparison by the Clerk of the record on appeal.

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed the seal of said Court at Detroit, this .... day of May A. D. 1941.

GEORGE M. READ,
Clerk, United States District Court, Eastern District of Michigan

By .....
Deputy-Clerk.

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PROCEEDINGS IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CAUSES ARGUED AND SUBMITTED

(March 11, 1942—Before: ALLEN, MARTIN and McALLISTER, Circuit Judges)

These causes are argued by Edward Reid and John H. Witherspoon for Appellants and by Morton K. Rothschild for Appellee and are submitted to the court.

JUDGMENT—No. 8987

(Entered April 8, 1942)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

JUDGMENT—No. 8988

(Entered April 8, 1942)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

JUDGMENT—No. 8989

(Entered April 8, 1942)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

JUDGMENT—No. 8990

(Entered April 8, 1942)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

JUDGMENT—No. 8991

(Entered April 8, 1942)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed April 8, 1942)

Nos. 8987, 8988, 8989, 8990, and 8991

UNITED STATES CIRCUIT COURT OF APPEALS

SIXTH CIRCUIT

JOHN W. PAUL ET AL., THE DETROIT BANK, formerly The Detroit Savings Bank, STATE OF MICHIGAN ET AL., COUNTY OF WAYNE ET AL., and CITY OF DETROIT ET AL.,
Appellants,

v.

UNITED STATES OF AMERICA,
Appellee.

APPEAL from the District Court of the United States for the Eastern District of Michigan, Southern Division.

Decided April 8, 1942

Before ALLEN, MARTIN and McALLISTER, Circuit Judges.

McALLISTER, Circuit Judge. For estate tax on the estate of John P. Paul, deceased, the Government claims a lien superior to the liens and claims of appellants, who seek review of the order of dismissal of their complaint, entered by the District Court. Appellants include the State of Michigan, County of Wayne, and City of Detroit, claiming liens based upon unpaid taxes, accruing subsequent to the death of Mr. Paul; The Detroit Bank, formerly The Detroit Savings Bank, with a claim on certain mortgages executed by decedent; and on other mortgages executed after his death, by his successors, and thereafter foreclosed; and the children of decedent. The latter, however, have filed no brief and it is unnecessary to review their contentions in the District Court. The substance of the claim asserted against the Government is

that its lien depends upon demand, which was not made; and, moreover, as against the mortgagee, that the lien is not valid because of failure to file notice by the Collector of Internal Revenue, as prescribed by statute.

Appellants contend that the Government is not entitled to priority of lien, relying upon Sec. 3186 of the Revised Statutes as amended by Sec. 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791 (a), which provides as follows:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.
>
> "(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—
>
> "(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or
>
> "(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or
>
> "(3) in the office of the clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.
>
> "(c) Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

"(1) May issue a certificate of release of the lien . . . ."

* * * * *

"(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

"(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond complying both with the requirements of Section 272 (j) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency), or of any similar provisions of any prior law, and the requirements of subsection (c) of this section.

"(f) Subsections (c), (d), and (e) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section. (U. S. C., Title 26, Secs. 1560-1567.)"

The Government contends that the issues in this case are governed by Sec. 315 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9, relating to the estate tax, which provides:

"Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. . . ."

It is argued that Sec. 3186, relied upon by appellants, provides for a lien in favor of the Government where a person liable to pay any tax, neglects or refuses to pay the same *after demand.* Under Sec. 315 of the Revenue Act of 1926, above referred to, it is provided, however, that the estate ... *shall be a lien* for ten years, unless the tax is sooner paid in full.

We are of the opinion that the Government is not limited in its claim of lien to Sec. 3186. That section is general in its terms, referring to "any tax," while the provisions of Section 315, enacted subsequently thereto, specifically relate to the estate tax, and set forth in unqualified language that it shall be a lien for a prescribed period unless it is sooner paid; and there is no mention therein of any requirement of demand or filing or notice. See *United States* v. *Security-First Nat. Bank,* 30 Fed. Supp. 113 (D. C. N. Dak.)

The lien for the estate tax arises upon the death of the owner of the estate taxed. As to the right of the Government to priority over the liens of appellants, the reasoning in *United States* v. *City of Greenville,* 118 Fed. (2d) 963 (C. C. A. 4), is determinative of the right to such priority. That case was a suit to foreclose a lien for unpaid income taxes upon real estate on which there were also liens for real estate taxes due the city, county and state. By state law, these were made paramount to all other charges. But it was held that since such liens were acquired subsequent to the acquisition of the lien of the United States, the latter was entitled to priority in payment. Such is our conclusion in the instant case.

Nor is the argument impressive that Sec. 315 (a) of the Revenue Act of 1926 is in violation of the Fifth Amendment of the Constitution of the United States, as contended by appellants, who base their claim on the fact that the statute with reference to the estate tax, gives the Government a secret lien and operates to deprive citizens of property which they have acquired in good faith and for value. Sec. 313 of the Revenue Act of 1926 provides for determination of the amount of estate tax upon written application of the executor to the Commissioner, and requires that determination of the amount of the tax, in order to secure discharge from personal liability therefor, shall be made within one year from such application, or if the application is made before the return is filed, then within one year after such filing. Such provisions do not operate as a release of any part of the gross estate from the lien

for any deficiency that may thereafter be determined to be due, except where title to such part of the gross estate has passed to a bona fide purchaser for value, in which case, such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

Provisions of the Michigan statute governing liens for property taxes are not here applicable; and if they were, being in derogation of federal law, would not control. *United States* v. *Snyder,* 149 U. S. 210; *United States* v. *City of Greenville,* supra. With regard to the estate on which the estate tax is collectible, it includes property in which decedent had an interest as tenant by the entirety. See *Goodenough* v. *Commissioner,* 83 Fed. (2d) 389 (C. C. A. 6); *Robinson* v. *Commissioner,* 63 Fed. (2d) 652 (C. C. A. 6).

The judgment of the District Court is affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the cases of *John W. Paul, et al,* v. *United States of America,* Nos. 8987-8991, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 25th day of May, A. D. 1942.

J. W. Menzies,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(seal)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 156

ORDER ALLOWING CERTIORARI—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 214

ORDER ALLOWING CERTIORARI—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Supreme Court of the United States

October Term, 1942

No. 156.

THE DETROIT BANK, formerly The Detroit Savings Bank, a Michigan Banking Corporation,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Ferris D. Stone,
Cleveland Thurber,
Edward S. Reid, Jr.,
Emmett E. Eagan,
Detroit, Michigan
Attorneys for Petitioner.

[illegible] COMPOSITION COMPANY, [illegible] WEST LARNED ST., [illegible]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. .....

THE DETROIT BANK, formerly The Detroit Savings Bank, a Michigan banking corporation,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, THE DETROIT BANK, formerly The Detroit Savings Bank, a Michigan banking corporation, respectfully represents that:

This case involves a simple but vital problem of fundamental justice and fairness between sovereign and citizen.

It is difficult to believe that there can exist anywhere, except perhaps in the so-called jurisprudence of Hitler's Germany, a principle of law sanctioning, by the imposition of a secret lien, the confiscation by the government of the United States of property owned by one of its citizens. The court below applied that arbitrary precept to sanction the seizure of the property of one of its citizens in satisfaction of taxes assessed against another. Indeed, that unprecedented depredation was permitted even though the owner of the property was a complete stranger to the transaction which gave rise to the tax and acquired the expropriated property in good faith, for value, and without any knowledge or reason to know or suspect any actual or potential claim on the part of his Government. If the decision of the court below is upheld that unconscionable doctrine will become imbedded in our law—forever a bitter reproach to the institutions of a free people.

John P. Paul died intestate at Detroit, Michigan, on May 6, 1926 (R-102). At the time of his death he and his wife, Lena Paul, owned as tenants by the entirety a considerable number of parcels of real estate located in that city (R-230). By the law of the State of Michigan (following the common law), Lena Paul acquired immediately upon the creation of the estate by the entirety, the right to one-half of the income and the right to the whole of the estate in the event she survived her husband. Lena Paul, as surviving tenant, became, immediately upon her husband's death, the sole owner of the aforementioned several parcels of real estate. Two of these parcels were then encumbered by mortgages held by Petitioner securing indebtedness in excess of $35,000.00 (R-233, 234). Subsequent to her husband's death and before assessment of the tax here involved, Lena Paul mortgaged ten of the parcels, which, with one exception

(R-230, 236) she and her husband had owned as tenants by the entirety, to Petitioner to secure indebtedness aggregating approximately $178,900.00 (R-230, 235-238). Petitioner acquired all of these mortgages in good faith and without any knowledge that Respondent had or claimed to have any interest in or claim on the property covered thereby (R-239). Default occurred in all of these mortages, including those made prior to the death of John P. Paul, and Petitioner thereupon foreclosed all of these mortgages. In each instance Petitioner became the purchaser at the foreclosure sale, bidding at such sales an aggregate of $263,196.87 for all of the property under foreclosure (R-233,238). The fact that the aggregate amount bid for these properties exceeded the amount originally secured by the mortgages which encumbered them is accounted for by the fact that Petitioner's bid included accrued interest and advances made by Petitioner to pay real estate taxes and premiums on insurance (R-233-238). The foreclosure sales were all completed prior to May 4, 1936 (R-233-238).

On May 4, 1936, just two days short of the tenth anniversary of John P. Paul's death (which was the date on which the lien for Estate Taxes expired), Respondent instituted the present suit (R. v). The Bill of Complaint alleged that there were unpaid Federal Estate Taxes due from the estate of John P. Paul, that Respondent had a lien therefor which arose upon Mr. Paul's death and continued for ten years thereafter, that even though unfiled and unrecorded, this lien was valid against subsequent good faith purchasers and encumbrancers of property which comprised a part of Mr. Paul's gross estate, including that in which he had an interest as a tenant by the entirety and that Respondent was entitled to have the property which Petitioner acquired upon the foreclosure of the aforementioned mortgages applied in

satisfaction of that lien (R-1-47). The Bill of Complaint further alleged and the evidence adduced in the District Court established the following facts (of none of which Petitioner was aware at the time it acquired the aforementioned mortgages): On or about July 5, 1927, Lena Paul, describing herself as "widow of John P. Paul, and joint owner of all of his property" filed a Federal Estate Tax Return covering the estate of her husband (R-229). In this return she reported a gross estate of $492,902.00, deductions of $329,823.49, a net estate of $164,078.51, and an estate tax liability of $3,450.00, which was duly paid (R-229). Under date of March 14, 1930, the Commissioner of Internal Revenue of the United States of America notified Lena Paul, as beneficiary of her husband's estate, of a deficiency of $23,271.84 in Estate Taxes payable with respect to that estate (R-229, 230). Within the time allowed by law, a petition was filed with the United States Board of Tax Appeals for a redetermination of the asserted deficiency (R-230). On November 4, 1932, the United States Board of Tax Appeals sustained the deficiency asserted by the Commissioner of Internal Revenue and entered its order accordingly (R-230). No appeal was taken from this order and on February 19, 1933, the Commissioner of Internal Revenue assessed against the estate of John P. Paul the aforementioned deficiency in the principal amount of $23,271.84, together with interest in the amount of $8,080.28 (R-230). No part of this deficiency or the interest thereon has been paid (R-230).

As stated above, the present suit was commenced by Respondent on May 4, 1936, in the United States District Court for the Eastern District of Michigan, Southern Division, to collect the aforementioned deficiency by foreclosure of its lien for Estate Taxes against fifty

parcels of real estate, twelve of which were those which Petitioner acquired as a result of the foreclosure of the aforementioned mortgages which it held (R-229, 233, 235-238). The remaining thirty-eight parcels are owned by persons other than Petitioner. Twenty-five of these remaining parcels are unencumbered and are owned by one or more of the children of John P. Paul and Lena Paul, or by the heirs of such of said children as are now dead (R-232, 233). The balance of the remaining parcels are encumbered by mortgages held by persons (other than Petitioner) who were also defendants in the District Court, some of which mortgages have now been foreclosed (R-234, 235, 238). All of the mortgages were made by either John P. Paul and Lena Paul, by Lena Paul alone or by descendants of John P. and Lena Paul (R-233, 235). Those made by both John P. Paul and Lena Paul having been made prior to the former's death and those made by Lena Paul or by the descendants of John P. and Lena Paul having been made subsequent to John P. Paul's death. The State of Michigan and two of its political subdivisions, the County of Wayne and the City of Detroit were also parties defendant by reason of liens which each possessed for unpaid real estate taxes assessed against the property in question and the issue of priority as between such liens and that of the United States is involved.

The case being one in equity, it was tried by the District Court upon a stipulation of facts supplemented by testimony. Only such of the facts as relate to the controversy between Respondent and this Petitioner are set forth in detail above.

The District Court found that Petitioner acquired all of the mortgages (which it held covering property owned

by John P. Paul and Lena Paul, as tenants by the entirety, prior to the former's death) in good faith, for value, and without any knowledge that Respondent had or claimed to have any lien, claim or charge on any of said property (R-239).

The District Court further found that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien for the collection of Federal Estate Taxes, which is separate and distinct from the general tax lien created by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) and that the provisions of *Section* 3186 *of the Revised Statutes* requiring that notice be filed or recorded to make the lien imposed by the latter section valid as against bona fide purchasers and encumbrancers, had no application to the lien imposed by *Section* 315 (*a*) *of the Revenue Act of* 1926. It concluded, contrary to Petitioner's contention, that the lien imposed by *Section* 315 (*a*) *of the Revenue Act of* 1926 arises upon the death of a decedent whose estate is liable for the payment of Federal Estate Taxes and is valid against subsequent purchasers and encumbrancers for value of property subsequently held to form a part of such decedent's gross estate, even though such purchasers and encumbrancers became such in good faith and without any knowledge of the existence or claimed existence of any such lien. The District Court also rejected Petitioner's contention that as so construed *Sectoin* 315 (*a*) *of the Revenue Act of* 1926 violated the Fifth Amendment of the Constitution of the United States and Petitioner's further contention that the lien described in that section in no event attached to property held by a decedent and his spouse as tenants by the entirety. The District Court, in conformity with Petitioner's contention, held that the lien

of those mortgages held by Petitioner, which antedated the death of John P. Paul, being prior in time, were superior in right to the lien asserted by Respondent in these proceedings.

The District Court also found that the lien asserted by Respondent in this case being prior in time was superior in right to the liens asserted by the State of Michigan and its political subdivisions regardless of notice. The State of Michigan and its subdivisions have filed or will shortly file a separate petition for certiorari to review the decision of the Circuit Court of Appeals with respect to them.

Section 315 (*a*) *of the Revenue Act of* 1926 and *Section* 3186 *of the Revised Statutes* are for the convenience of this Honorable Court set forth in full in the Appendix to this Petition.

The findings of fact and conclusions of law of the District Court, which are reported in 41 *Fed. Supp.* 41 are found on pages 229 to 243, both inclusive, of the record; the Court's decree on pages 247 to 256, both inclusive.

Upon appeal by Petitioner (and several other defendants in the District Court including the State of Michigan, the County of Wayne, and the City of Detroit) to the United States Circuit Court of Appeals for the Sixth Circuit, that Court, in a brief opinion, affirmed the decision of the District Court. The opinion of the Circuit Court of Appeals (R. 290) is reported in 127 *Fed.* (2*nd*) 64.

Judgment was entered April 8, 1942.

THIS PETITION PRESENTS FOUR QUESTIONS:

I.

Does Section 315 (a) of the Revenue Act of 1926 (the Estate Tax Law) (Section 827 (a) of the Internal Revenue Code, as amended) impose a lien separate and distinct from that imposed by Section 3186 of the Revised Statutes of the United States (general Internal Revenue provisions) (Sections 3670 to 3677 of the Internal Revenue Code, as amended)?

The District Court and the Circuit Court of Appeals both determined that the lien imposed by *Section* 315 (*a*) *of the Revenue Act of* 1926 was separate and distinct from that imposed by *Section* 3186 *of the Revised Statutes of the United States.*

II.

Is it necessary that the lien herein sought to be foreclosed be filed or recorded in the manner prescribed by Section 3186 of the Revised Statutes of the United States (Sections 3670 to 3677 of the Internal Revenue Code, as amended) to make the same effective against bona fide purchasers and encumbrancers?

Both the District Court and the Circuit Court of Appeals answered this question in the negative.

III.

Does the lien herein sought to be foreclosed attach to property owned by a decedent, as one of the tenants of an estate by the entirety?

Both the District Court and the Circuit Court of Appeals answered this question in the affirmative.

IV.

If Section 315 (a) of the Revenue Act of 1926 (Section 827 (a) of the Internal Revenue Code, as amended) is construed as imposing a lien which is effective against bona fide purchasers and encumbrancers without filing or recording, does that section as so construed violate the Fifth Amendment to the Constitution of the United States?

Both the District Court and the Circuit Court of Appeals answered this question in the negative.

BASIS OF JURISDICTION.

Jurisdiction is invoked under *Section* 240 (*a*) *of the Judicial Code, as amended by the Act of February* 13, 1925, 43 *Stat.* 938; 28 *USC* 347 (*a*).

Petitioner is advised and believes that the judgment of the Circuit Court of Appeals is erroneous and contrary to the just rights of Petitioner, and that this Court should require said cause to be certified to this Court for its review and determination, in conformity with the provisions of the Act of Congress in such case made and provided.

CERTIORARI SHOULD BE GRANTED for the following reasons:

I.

The decision of the Circuit Court of Appeals involves the determination of an important question of Federal law, which has not been but should be settled by this Court, namely, the character, scope and effect of the lien accorded to the United

States of America by Federal Statutes for the collection of Federal Estate Taxes. More particularly it concerns the impact of that lien on the property of Respondent's citizens who are complete strangers to the transaction which gives rise to the tax.

II.

The decision of the Circuit Court of Appeals involves the determination of a question of substance, which has not been but should be settled by this Court, relating to the construction and application of statutes of the United States of America, namely, *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) *and Section* 3186 *of the Revised Statutes, as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code, as amended*). Specifically that decision deals with the proper relationship between those two sections and their effect on the property of citizens not themselves parties to the taxed transaction but who in the course of ordinary and legitimate business affairs deal with the person liable for a tax for which a lien is imposed.

III.

The decision of the Circuit Court of Appeals involves the construction and application of statutes of the United States, namely, *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) and *Section* 3186 *of the Revised Statutes, as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code, as amended*), which as construed and applied by the Circuit Court of Appeals are challenged as being in contravention of Article V of the Constitution of the United States. This challenge rests upon the confiscatory effect of a construction which dispenses with the requirement that notice of the lien for taxes be filed as a condition precedent to its effectiveness against innocent purchasers and encumbrancers, and upon the arbitrary and capricious discrimination in which that interpretation results in the application of those statutes to different classes of such innocent vendees and mortgagees of property having precisely the same characteristics.

IV.

The decision of the Circuit Court of Appeals has cast, and will continue to cast, a cloud upon titles of bona fide purchasers and encumbrancers of real and personal property located throughout the United States of America in which a decedent who has died within the last ten years has had any interest, and hence involves a question of general and public importance.

V.

The decision of the Circuit Court of Appeals determining as it does the scope, force and effect of the lien of the United States for the collection of Federal Estate Taxes and the ability and willingness of encumbrancers to lend money to estates in the process of liquidation vitally concerns the revenue of the United States and the collection thereof, and hence involves a question of general and public importance.

WHEREFORE, Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, to the end that said cause may be reviewed and determined by this Court, as provided by law, and that Petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and that the judgment of said Circuit Court of Appeals may be reversed by this Honorable Court.

THE DETROIT BANK,
formerly The Detroit Savings Bank,

By FERRIS D. STONE,
CLEVELAND THURBER,
EDWARD S. REID, JR.,
EMMETT E. EAGAN,
Attorneys for Petitioner.

APPENDIX

Section 3186 *of the Revised Statutes of the United States* (*Act of July* 13, 1866, *c.* 184, *Sec.* 9, 14 *Stat.* 107 *as revised and amended by an Act of March* 1, 1879, *c.* 125, *Sec.* 3, 20 *Stat.* 331) *as amended by Act* 451, *March* 4, 1913 (*c.* 166, 37 *Stat.* 1016,) *by an Act of February* 26, 1925, *c.* 344, 43 *Stat.* 994, *by Section* 613 *of the Revenue Act of* 1928, *by Section* 509 *of the Revenue Act of* 1934 *and Section* 401 *of the Revenue Act of* 1939, *now known as Sections* 3670 *to* 3677 *of the Internal Revenue Code,* as amended, reads as follows:

"§3670. Property subject to lien

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

"§3671. Period of lien

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

"§3672. Validity Against Mortgagees, Pledgees, Purchasers, and Judgment Creditors

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee,

pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) (1) *Exception in Case of Securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner provided in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase, such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

"(2) *Definition of Security.*—As used in this subsection the term 'security' means any bond, debenture, note, or certificate, or other evidence of

indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(3) *Applicability of Subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose."

"§3673. Release of lien

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) *Liability Satisfied or Unenforceable.* The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) *Bond Accepted.* There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations."

"§3674. Partial Discharge of Property

(a) *Property Double the Amount of the Liability.* Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) *Part Payment.* Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States."

"§3675. Effects of certificates of release or Partial Discharge

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished."

"§3676. Single Bond Covering Release of Lien and Payment of Income Tax Deficiency

The Commissioner, with the approval of the Secretary, may by regulation provide for the accept-

ance of a single bond complying both with the requirements of Section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of subsection (b) of section 3673."

"§3677. Extended Application for Provisions Relating to Release or Partial Discharge

Sections 3673, 3674, 3675, and 3676 shall apply to a lien in respect of any internal revenue tax, whether or not the lien is imposed by this subchapter."

Section 315 *of the Revenue Act of* 1926, *as amended by Section* 613 (*b*) *of the Revenue Act of* 1928 *and by Sections* 803 *and* 809 *of the Revenue Act of* 1932, *now known as Section* 827 *of the Internal Revenue Code* reads as follows:

"§827. Lien for Tax

(a) *Upon gross estate.* Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) *Upon Property of Transferee.* If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession and enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the

tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(c) *Continuance after Discharge of Executor.* The provisions of section 825 shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. .....

THE DETROIT BANK, formerly The Detroit Savings Bank, a Michigan banking corporation,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S SUPPORTING BRIEF

Official Reports of Opinions Rendered in the Courts Below

The opinion of the District Court (R. 229-243) is reported in 41 *Fed. Supp.* 41.

The opinion of the Circuit Court of Appeals (R. 292-296) is reported in 127 *Fed.* (2*nd*) 64.

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF SUPREME COURT IS INVOKED

This is a civil suit in equity arising under the laws of the United States providing for internal revenue and the

collection thereof (R. 100). The Respondent, The United States of America, instituted this action, as plaintiff, to foreclose its lien for Federal Estate Taxes against fifty parcels of real estate located in the City of Detroit, Michigan, all of which were at one time owned by John P. Paul and Lena Paul, his wife, as tenants by the entirety, to collect a deficiency in Federal Estate Taxes in the amount of $23,271.84 and interest thereon assessed against the estate of John P. Paul. The defendants are, encumbrancers (some of whom, including Petitioner, have foreclosed their liens and have become owners of the encumbered property as a result of their purchase at the foreclosure sale) of property which formerly belonged to John P. Paul and his wife, as tenants by the entirety, the State of Michigan and its political subdivisions, the County of Wayne and the City of Detroit, having liens against the property in question for unpaid real estate taxes and the descendants of John P. Paul and his wife (R. 229). The case was tried by the District Court upon a stipulation of facts supplemented by some testimony. The decree in the District Court in general granted the relief prayed for in the Bill of Complaint, except with respect to those parcels of real estate which were encumbered prior to the death of John P. Paul (R. 247-256). Petitioner and eight of the other defendants, including the State of Michigan and its political subdivisions, the County of Wayne and the City of Detroit, appealed from that decree to the United States Circuit Court of Appeals for the Sixth Circuit which affirmed the decree of the District Court (R. 289-291).

Certiorari is prayed and jurisdiction is invoked under *Section* 240 (*a*) *of the Judicial Code, as amended by the Act of February* 13, 1925, 43 *Stat.* 938; 28 *USC* 347 (*a*).

Petitioner submits that this Honorable Court should grant a writ of certiorari as prayed by Petitioner for the following reasons:

I.

The decision of the Circuit Court of Appeals involves the determination of an important question of Federal law, which has not been but should be settled by this Court, namely, the character, scope and effect of the lien accorded to the United States of America by Federal Statutes for the collection of Federal Estate Taxes. More particularly it concerns the impact of that lien on the property of Respondent's citizens who are complete strangers to the transaction which gives rise to the tax.

II.

The decision of the Circuit Court of Appeals involves the determination of a question of substance, which has not been but should be settled by this Court, relating to the construction and application of statutes of the United States of America, namely, *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) *and Section* 3186 *of the Revised Statutes, as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code, as amended*). Specifically that decision deals with the proper relationship between those two sections and their effect on the property of citizens not themselves parties to the taxed transaction but who in the course of ordinary and legitimate business affairs deal with the person liable for a tax for which a lien is imposed.

III.

The decision of the Circuit Court of Appeals involves the construction and application of statutes of the United States, namely, *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) and *Section* 3186 *of the Revised Statutes, as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code, as amended*), which as construed and applied by the Circuit Court of Appeals are challenged as being in contravention of Article V of the Constitution of the United States. This challenge rests upon the confiscatory effect of a construction which dispenses with the requirement that notice of the lien for taxes be filed as a condition precedent to its effectiveness against innocent purchasers and encumbrancers, and upon the arbitrary and capricious discrimination in which that interpretation results in the application of those statutes to different classes of such innocent vendees and mortgagees of property having precisely the same characteristics.

IV.

The decision of the Circuit Court of Appeals has cast, and will continue to cast, a cloud upon titles of bona fide purchasers and encumbrancers of real and personal property located throughout the United States of America in which a decedent who has died within the last ten years has had any interest, and hence involves a question of general and public importance.

V.

The decision of the Circuit Court of Appeals determining as it does the scope, force and effect of the lien

of the United States for the collection of Federal Estate Taxes and the ability and willingness of encumbrancers to lend money to estates in the process of liquidation vitally concerns the revenue of the United States and the collection thereof, and hence involves a question of general and public importance.

STATEMENT OF CASE

At the time of his death on May 5, 1926 (R. 229) John P. Paul and his wife, Lena Paul, owned, as tenants by the entirety, a considerable number of parcels of real estate located in the City of Detroit, Michigan (R. 230-231). Two of these parcels were then encumbered by mortgages held by Petitioner, and subsequently Lena Paul, as survivor of herself and her husband, or the children of John and Lena Paul, to whom Lena Paul conveyed title, mortgaged ten additional parcels to Petitioner (R. 106, 107, 109-111). All of these mortgages were acquired by Petitioner for value, in good faith and without any knowledge that Respondent had or claimed to have any interest in the property covered by these mortgages (R. 239). Default occurred in all of these mortgages, and Petitioner thereupon proceeded to foreclose all of these mortgages and to become the purchaser of all of the encumbered properties at the foreclosure sales thereof (R. 233, 234, 235-239). The foreclosure sales were all completed prior to May 4, 1936.

On May 4, 1936, (just one day short of the expiration of Respondent's lien for Estate Taxes) the present suit was instituted (R. v) and Petitioner then learned for the first time that Respondent claimed a lien on all of the property on which Petitioner had held mortgages and of

which it believed itself to be the absolute owner (R.239). The Bill of Complaint alleged and the evidence adduced upon the trial established the following facts: After Lena Paul (describing herself as "widow of John P. Paul and joint owner of all of his property") had filed, on July 5, 1927, an Estate Tax Return disclosing a liability of $3,450.00 (R. 229), which was duly paid (R. 229) the Commissioner of Internal Revenue on March 14, 1930 asserted a deficiency in Estate Taxes of $23,271.84 against her husband's estate (R. 229, 230). An appeal was taken to the Board of Tax Appeals and on November 4, 1932, the Commissioner's determination was upheld (R. 230). No appeal was taken from the decision of the Board of Tax Appeals, and on February 19, 1933, the amount of the deficiency, together with interest in the amount of $8,080.20, was assessed against John P. Paul's estate (R. 230). No part of this deficiency was ever paid (R. 230).

All but two of Petitioner's mortgages antedated the assertion of the deficiency by the Commissioner. The two mortgages which were made subsequent to the date of the deficiency notice were made two years prior to the assessment of the deficiency (R. 106, 107, 109-112, 229-230).

The case was tried by the District Court on a stipulation of facts supplemented by testimony. It found that Petitioner acquired all of the mortgages, which it held, for value, in good faith and without any knowledge that Respondent had or claimed to have any lien on or with respect to any of the property covered by those mortgages (R. 239). The District Court further found that the lien asserted in the present proceedings arose at the date of John P. Paul's death and that, even though un-

recorded, was superior in right to such of Petitioner's mortgages as were made subsequent to John P. Paul's death (R. 247). Accordingly the Court decreed that the property covered by these mortgages should be sold in satisfaction of the lien asserted by Respondent (R. 249). It determined, however, that Respondent's lien for Estate Taxes was subsequent in time and inferior in right to such and inferior in right to such of Petitioner's mortgages as antedated John P. Paul's death (R. 248).

The District Court's decision and that of the Circuit Court of Appeals are predicated on the theory that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien for the collection of Estate Taxes which is separate and distinct from the general tax lien created by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) and that the provisions of the latter section, requiring that notice be filed to make the lien imposed by that section valid as against bona fide purchasers and encumbrancers, have no application to the lien referred to in *Section* 315 (*a*) *of the Revenue Act of* 1926. Both the District Court and the Circuit Court of Appeals rejected Petitioner's contention that, as so construed, *Section* 315 (*a*) *of the Revenue Act of* 1926 violated the Fifth Amendment of the Constitution of the United States and held untenable Petitioner's position that the lien described in that section in no event attaches to property held by a decedent and his spouse, as tenants by the entirety.

SPECIFICATION OF ERRORS RELIED ON

The Circuit Court of Appeals erred in the following respects:

1. In affirming the decree of the District Court.

2. In deciding that the lien referred to in *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) is separate and distinct from that imposed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

3. In determining that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien *ex proprio vigore*.

4. In determining that the lien herein sought to be foreclosed is valid against bona fide purchasers and encumbrancers for value, even though no notice of such lien is filed or recorded as provided in *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

5. In following the decision of the Court in *United States v. Security-First National Bank of Los Angeles*, 30 *Fed. Supp.* 113 (*D. C. Cal.*) *Appeal dismissed* 113 *Fed.* (2*nd*) 491 (*C.C.A.* 9*th*).

6. In failing to determine that if *Section* 315 (a) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) is construed as imposing a lien which is effective against bona fide purchasers and encumbrancers for value (and particularly such purchasers and encum-

brancers from a surviving tenant by the entirety) without filing or recording, that section as so construed violates the Fifth Amendment of the Constitution of the United States.

7. In determining that the lien herein sought to be foreclosed attaches at any time to property formerly owned by a decedent and his spouse as tenants of an estate by the entirety.

SUMMARY OF ARGUMENT

Petitioner contends that the judgment of the Circuit Court of Appeals is erroneous for the following reasons:

1. The Circuit Court of Appeals erroneously decided that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien which is separate and distinct from that prescribed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*). Actually the lien under foreclosure must be that imposed by the latter section for the former section imposes no lien *ex proprio vigore,* but merely describes certain incidents (such as duration and the property to which the lien attaches) of the lien imposed by *Section* 3186 *of the Revised Statutes* as applied to estate taxes. The legislative history of those two sections and the clearly defined Congressional policy of protecting bona fide purchasers and encumbrancers demonstrates beyond question that *Section* 315 (*a*) *of the Revenue Act of* 1926 should receive this

construction. This interpretation is consistent with statutory language; effectuates the intent of Congress and avoids the harsh and grossly absurd results which will follow from the construction of this section adopted by the Court below.

Since *Section* 3186 *of the Revised Statutes* (*and not Section* 315 (*a*) *of the Internal Revenue Code*) is the generating source of the lien involved in these proceedings, that lien is inferior to the lien of the mortgages held by Petitioner because notice of that lien was not filed, as provided in that section, until long after the lien of those mortgages arose.

2. If the decision of the Circuit Court of Appeals properly construes the provisions of *Section* 315 (*a*) *of the Revenue Act of* 1926, that section as so construed violates the Fifth Amendment to the Constitution of the United States. This is so, not only because it thus imposes a secret lien, valid without recordation, against bona fide purchasers and encumbrancers, but also because protection against this secret lien is arbitrarily and capriciously denied to bona fide purchasers and encumbrancers from a surviving tenant of an estate by the entirety, while complete protection with respect to this lien is accorded innocent vendees and mortgagees from other transferees of property not subject to administration, the value of which is includable in the value of the decedent's gross estate for Estate Tax purposes.

3. Even if the interpretation accorded by the court below to *Section* 315 (*a*) *of the Revenue Act of* 1926 is proper and that section as so construed does not violate the Fifth Amendment of the Con-

stitution of the United States, Respondent is still not entitled to the relief granted it by the judgment which this Court is asked to review. Foreclosure was decreed against property which the decedent and his wife owned at the time of decedent's death, as tenants by the entirety, notwithstanding the fact that in no event does the lien under foreclosure at any time attach to property held in such a tenancy.

REFERENCE TO STATUTORY PROVISIONS

During the course of the pages of this brief which follow Petitioner will have occasion to refer frequently to *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*), *Section* 315 (*b*) *of the Revenue Act of* 1926, *as amended* (*Section* 827 (*b*) *of the Internal Revenue Code, as amended*), and *Section* 3186 *of the Revised Statutes, as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code as amended*). In the interest of readability and economy of expression Petitioner will frequently refer to these sections respectively, simply as "*Section* 315 (*a*)," "*Section* 315 (*b*)" and "*Section* 3186." Those sections are set forth in an appendix to this brief.

ARGUMENT

I. The lien herein sought to be foreclosed is imposed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

A

PREFACE

This branch of the case involves an interesting and difficult problem of statutory construction. The statutes to be construed are *Section* 315 (*a*) *of the Revenue Act of* 1926, *as amended* (*Section* 827 (*a*) *of the Internal Revenue Code*) and *Section* 3186 *of the Revised Statutes as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code, as amended*).

The pertinent provisions of *Section* 315 (*a*) *of the Revenue Act of* 1926 read as follows:

> "* * *. Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. * * *."

The applicable portions of *Section* 3186 *of the Revised Statutes* are the following:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien

> in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector * * *."

It is Petitioner's position that *Section* 315 (*a*) imposes no lien *ex proprio vigore* and that the lien to which that section refers is not a separate and distinct lien, but is rather the lien imposed by *Section* 3186. It is Petitioner's further contention that Respondent, in the present proceeding, must be attempting to foreclose the lien prescribed by *Section* 3186 for that is the only lien which Congress has conferred upon it for the collection of Estate Taxes. Petitioner takes the position that the only purpose of *Section* 315 (*a*) is to prescribe certain incidents of the lien imposed by *Section* 3186, designed to adapt that lien, in so far as is necessary, to the collection of Estate Taxes.

If, in construing *Section* 315 (*a*), one were to confine one's self exclusively to the language used, one might with equal plausibility reach two different conclusions—one that that section was intended to impose a lien; the other that the section imposes no lien but merely describes certain attributes of a lien imposed by another statutory provision. The words and grammatical construction of that section describe the idea of duration and character of a thing theretofore in existence as aptly as they suggest the concept of creation.

The problem of statutory construction involves more that the application of dictionary definitions to the words in which a legislative enactment is couched. "The meaning of a sentence may be more than that of the separate words as a melody is more than the notes." *Gregory v. Helvering*, 69 F. (2nd) 809 (C.C.A. 2nd). Where, as in the instant case, the language of the statute is susceptible of two different interpretations, that interpretation should be selected which appears most consonant with the probable purpose of the legislative body which enacted it and which avoids absurd and unreasonable results. Competing interpretations of a statutory provision must be weighed in the light of legislative history and the manner in which that provision operates on transactions claimed to fall within the ambit of its intended operation. *Helvering v. New York Trust Co.*, 292 *U. S.* 455.

B

The Legislative History of *Section* 315 (*a*) *of the Revenue Act of* 1926, *as amended, and of Section* 3186 *of the Revised Statutes* clearly demonstrates that the former section was not intended to impose a lien *ex proprio vigore*.

The ancestor of modern Federal Tax Liens, conferred on Respondent to aid it in the collection of taxes which it imposes, is *Section* 3186 *of the Revised Statutes of the United States of* 1879. This section was a codification of an Act of July 13, 1866 in which the forerunner of *Section* 3186 *of the Revised Statutes* first appeared. See *c.* 184, §9, 14 *Stat.* 107. *Section* 3186 *of the Revised Stat-*

utes, therefore, dates from 1866. That section when enacted applied, and still applies, to "any tax" and imposes a lien on "all property" of the taxpayer. Its application is general in the broadest possible sense. It was in existence prior to the adoption of the Sixteenth Amendment to the Constitution of the United States and the Revenue Acts enacted thereunder, including those imposing Federal Estate Taxes. *Section* 3186 has, therefore, served as a nucleus around which were built subsequent lien provisions appearing in Revenue Acts imposing specific types of taxes. It is, therefore, important to examine the legislative process by which Congress built subsequent legislation about that nucleus.

Section 3186 (*which was the Act of July* 13, 1866, c. 184, §9, 14 *Stat.* 107, *as revised and amended by an Act of March* 1, 1879, *c.* 125, §3, 20 *Stat.* 331), originally provided as follows:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person."

Prior to the enactment of the first Revenue Act imposing an income tax pursuant to the Sixteenth Amendment to the Constitution of the United States, Congress by *Act* 451, *passed March* 4, 1913, *c.* 166, 37 *Stat.* 1016, added the following proviso to *Section* 3186 *of the Revised Statutes*:

"Provided, however, That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the District court of the district within which the property subject to such lien is situated: Provided further, That whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, and in the State of Louisiana in the parishes thereof, and in the States of Connecticut, Rhode Island, and Vermont in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records of the towns and cities, then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, or in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records in the States of Connecticut, Rhode Island, and Vermont of the towns or cities within which the property subject to the lien is situated."

When Congress enacted the first income tax law pursuant to the Sixteenth Amendment in the Fall of 1913, it was confronted with the problem of selecting methods of enforcing the tax which it imposed. One of the most ancient and time-honored methods of enforcing collection of taxes was by the imposition of a lien. It is hardly to be assumed that Congress is marshalling methods of enforcement of the newly imposed income taxes dismissed from its consideration the ancient and efficient method of imposing a lien. The Common Law lien of the sovereign

for the collection of taxes has never existed in favor of the United States. *United States v. The State Bank of North Carolina*, 6 *Peters* 29; *Equitable Trust Company v. Connecticut Brass & Manufacturing Corporation*, 290 F. 712 (C.C.A. 2nd); *United States v. Middle States Oil Corporation*, 18 F. (2nd) 231 (C.C.A. 8th); *In Re Wyley Co.*, 292 F. 900 (N.D. Ga.). If the device of lien was to be included in Respondent's arsenal of weapons for enforcement, it was necessary that there be express statutory provision therefor. In providing the Government with a lien, Congress did what it did with respect to all other administrative provisions. It adopted a policy of taking existing statutory provisions applicable to Internal Revenue Taxes generally and made only such changes as were necessary to make them function efficiently in their new surroundings. It did not adopt a whole new set of administrative provisions, separate and distinct from those in force with respect to existing Internal Revenue Taxes. In short, it built its system of the administration and enforcement of income taxes into the existing scheme of administration and enforcement of other Internal Revenue Taxes.

In the existing scheme of things, it found *Section* 3186, which provided a lien for "all taxes" on "all property" of the taxpayer. This it found it sufficient to arm those charged with the enforcement of income taxes with the desired lien. Congress did not enlarge or diminish the lien provided by *Section* 3186 but accepted it as it was. *Section* 3186 remains today the basic and indeed the only lien provision for the enforcement of income taxes.

In 1916, three years after the imposition of the first modern income tax, Congress enacted the first Federal Estate Tax. The policy of Congress of building into

the existing superstructure of methods of administration and enforcement of Internal Revenue Taxes generally, the system of administration and enforcement of a newly enacted tax, had not changed. In adopting a system of administering and collecting the newly imposed Federal Estate Tax, Congress started with the assumption that existing methods of administration and collection were to be adopted. Congress did not leave this matter to inference; it so provided in language which leaves no doubt of its intent. *Section* 211 *of the Revenue Act of* 1916, the second from the last section in Title II of that Act (which imposed the first Federal Estate Tax) provided as follows:

> "That all administrative, special and general provisions of law, *including the laws in relation to the assessment and collection of taxes* not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions."
>
> (Italics supplied)

One of the "laws in relation to the collection of taxes" then in existence was *Section* 3186, which provided a lien for "any tax" on "all property" of the taxpayer.

Is it reasonable to assume that, with *Section* 3186 before it, the express terms of which made that section applicable to the Estate Tax which it proposed to enact, Congress provided Respondent (by adopting Section 209 of the Revenue Act of 1916, the predecessor of and identical with Section 315 (a) of the Revenue Act of 1926), with a lien separate and distinct from and in addition to that already provided by *Section* 3186? Or is it more reasonable to suppose that by including *Section* 209 *in the Revenue Act of* 1916, Congress merely intended to

provide that the lien imposed by *Section* 3186 as applied to Estate Taxes should attach, not when the assessment list was received by the Collector, but rather at the date of the decedent's death, (see, *Rosenberg v. McLaughlin,* 66 F. (2nd) 271 (C.C.A. 9th)), and that the lien imposed by *Section* 3186 should from that time attach to the gross estate of the decedent and continue in existence (unless the tax was sooner paid in full) for a period of ten years. In view of the avowed Congressional policy of utilizing existing methods of administration and enforcement for newly enacted taxes rather than adopting new methods of administration and enforcement, the latter is the only reasonable construction.

Section 3186 provided, when the *Revenue Act of* 1916 was enacted, and still provides that the lien imposed by that section should attach when the assessment list was received by the Collector "unless another date is specifically fixed by law." With this provision in mind, Congress exercised its reserved right of specification and enacted *Section* 209 *of the Revenue Act of* 1916 to make the lien of *Section* 3186 attach at the date of the decedent's death. This change Congress undoubtedly conceived necessary to forestall claims by beneficiaries of a decedent's estate that distribution freed them of the obligation to apply the distributed property in satisfaction of unpaid estate taxes and to make available as against such beneficiaries the remedy of distraint. See, *Rosenberg v. McLaughlin,* 66 Fed. (2nd) 271 (C.C.A. 9th). Since a dead man is technically incapable of owning any property, death necessarily marks the transmission of "all property and rights in property, whether real or personal belonging to" the decedent to his personal representative for administration and distribution. Such property and property rights become transmuted into the

decedent's "estate". By providing in *Section* 315 (*a*) that the lien imposed by *Section* 3186 should, as applied to estate taxes, attach to the "gross estate" of a deceased taxpayer, Congress merely recognized that transmutation. The adjective "gross" was used to insure that the lien would encompass all of the property comprising the "estate" undiminished by claims arising *intervivos* which had not become a lien against specific property at the date of death and hence did not reduce the decedent's interest in specific property. Because the estate tax is imposed on an amount which includes the value of property which does not technically belong to the decedent (e. g., property transferred in contemplation of or intended to take effect in possession or in enjoyment at or after death) Congress extended the lien imposed by *Section* 3186 to certain types of such property by enacting *Section* 315 (*b*). It did not, however, extend this lien to property held by the decedent and another, as tenants by the entirety. (See pages 49 to 52 of this brief).

Section 315 (*a*) specifically limits the duration of the lien imposed by *Section* 3186 to ten years as applied to Estate Taxes. *Section* 3186 does not specifically prescribe the period of enforceability of the lien thereby imposed and Congress apparently deemed it desirable to mark its termination as applied to estate taxes. Presumably it selected the ten-year period as one which would approximate the maximum period of time during which an estate was likely to be in the process of administration.

Section 3186 has remained in force since its passage in 1866 and since 1913 has contained provisions requiring the filing of notice of the lien imposed thereby to make that lien valid as against bona fide purchasers and encumbrancers. *Section* 209 *of the Revenue Act of* 1916

(describing certain attributes of the lien imposed by *Section* 3186 as applied to the collection of Estate Taxes) was reenacted as *Section* 409 *of the Revenue Act of* 1918, as *Section* 409 *of the Revenue Act of* 1921, as *Section* 315 (*a*) *of the Revenue Act of* 1924 and finally as *Section* 315 (*a*) *of the Revenue Act of* 1926. In each of these Revenue Acts there was a provision substantially similar to *Section* 211 *of the Revenue Act of* 1916 making applicable to the taxes imposed by those Revenue Acts provisions of existing law in relation to the assessment and collection of taxes, including *Section* 3186. See *Section* 1305 *of the Revenue Act of* 1918, *Section* 1300 *of the Revenue Act of* 1921, *Section* 1100 *of the Revenue Act of* 1924, and *Section* 1100 *of the Revenue Act of* 1926. What has been said above with respect to the relation between Section 3186 and *Section* 209 *of the Revenue Act of* 1916 *applies* equally well to the relationship between the former, and sections reenacting *Section* 209 *of the Revenue Act of* 1916, *including Section* 315 (*a*) *of the Revenue Act of* 1926.

The history of *Section* 315 (*a*) and *Section* 3186 subsequent to 1926 simply serves to confirm our contention that the latter section is the generating source of the lien mentioned in the former.

When Congress adopted the *Revenue Act of* 1928, it was deemed advisable to make specific provision with respect to the manner in which taxpayers might procure releases of tax liens. *Reports of Ways and Means Committee of the House of Representatives* and of the *Finance Committee of the Senate on the Revenue Act of* 1928. The release provisions which Congress finally adopted as part of *Section* 613 (*a*) *of the Revenue Act of* 1928 were added, not to *Section* 315 (*a*). Instead they were in-

corporated in *Section* 3186 as part thereof and specifically made applicable to all types of Internal Revenue Taxes. It is odd, indeed, if *Section* 315 (*a*) imposes a lien which is separate and distinct from that prescribed by *Section* 3186, that Congress did not amend both sections by specifically adding similar release provisions to each. The explanation of the manner in which Congress made that amendment indicates quite clearly that it regarded *Section* 3186 as imposing a basic lien for all taxes and that it was continuing its policy of building the Federal Statutory Law relating to liens around that provision as a nucleus. It also indicates that Congress conceived *Section* 315 (*a*) as an adjunct to *Section* 3186 and not as a provision separate, distinct and independent of the latter section.

At the time that Congress adopted the *Revenue Act of* 1934, it again indicated that it regarded *Section* 3186 as the generating source of all Federal Tax Liens. Among the recommendations made by the Secretary of the Treasury with respect to the Revenue Act of 1934 was the following:

> "At the present time there are two methods provided by law for releasing liens for estate and gift taxes. The authority provided in section 315 (a) of the Revenue Act of 1926 and in section 510 of the Revenue Act of 1932 is fully adequate. The Treasury recommends the elimination of the second method, which is authorized by section 3186 of the Revised Statutes, as amended by section 613 (a) of the Revenue Act of 1928. This amendment would be accomplished by adding to the end of that section the words 'except the lien imposed by section 315 of the Revenue Act of 1926, and the lien imposed by section 510 of the Revenue Act of 1932.'"

The underlying assumption of the recommendation of the Secretary of the Treasury was that *Section* 315 (*a*) was a separate, distinct and self-operating section, not in any way related to *Section* 3186. It is significant that Congress rejected this recommendation for it indicates unequivocal Congressional disapproval of the underlying theory of the recommendation.

Before concluding this subsection of the brief, one further significant point should be noted. Respondent's present position that *Section* 315 (*a*) imposes a lien and one which is separate and distinct from that imposed by *Section* 3186 contrasts strangely with the complete absence of even the slightest intimation in the Regulations promulgated by the Commissioner of Internal Revenue interpretative of *Section* 315 (*a*) (and the predecessors of that section in previous Revenue Acts) that such was or would be the position of Respondent.

C

The construction of *Section* 315 (*a*) *of the Revenue Act of* 1926, *as amended* (*Section* 827 (*a*) *of the Internal Revenue Code*) and of *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) urged by Petitioner will effectuate a well defined Congressional policy of protecting bona fide purchasers and encumbrancers against the evils of secret tax liens.

We alluded above to the fact that as originally enacted *Section* 3186 contained no provisions requiring notice of the lien imposed thereby to be filed or recorded in order to make the same effective against bona fide purchasers and encumbrancers. While the law stood in this posture, *United States v. Snyder*, 149 U. S. 210, and *United States v. Curry*, 201 F. 371 (D. C. Md.) were

decided. Broadly speaking, these cases held that since *Section* 3186 contained no provision requiring the filing or recording of notice of the lien imposed thereby to make it effective against bona fide purchasers and encumbrancers no such filing or recording of notice was necessary. The repercussions of those decisions are well stated by the Circuit Court of Appeals for the Third Circuit in *United States v. Beaver Run Coal Company,* 99 F. (2nd) 610 (C.C.A. 3rd). Speaking of the reason for the amendment of *Section* 3186 to require the filing or recording of notice to make the lien imposed thereby effective against bona fide purchasers and encumbrancers, the Court said:

> "On May 1, 1893, the United States Supreme Court, in the case of *United States v. Snyder,* 149 U. S. 210, held that the lien created by the above section was not subject to the recording laws of the states, and that it was enforceable even against a subsequent bona fide purchaser for value without notice. This decision cast a cloud of uncertainty upon titles to land throughout the United States and, before long, under the leadership of the American Bar Association, agitation for remedial legislation began. By the Act of March 4, 1913, Congress amended Section 3186 by adding thereto a provision—'that such lien shall not be valid as against any mortgagee, purchaser or judgment creditor until' certain recording and filing requirements, thereafter set forth, had been fulfilled. 37 Stat. 1016."

The amendment in 1913 of *Section* 3186 to require filing or recording of notice of the lien imposed thereby to make it effective against bona fide purchasers and encumbrancers marked the inauguration of a policy of protecting such innocent vendees and mortgagees which Congress has consistently adhered to.

When Congress enacted the *Revenue Act of* 1939, it again reaffirmed its policy of according protection to bona fide purchasers and encumbrancers of property subject to liens for Internal Revenue Taxes by adopting *Section* 401 *of the Revenue Act of* 1939 amendatory of *Section* 3186 which was reenacted as *Sections* 3670 to 3677 *of the Internal Revenue Code. Section* 401 *of the Revenue Act of* 1939 *amends Section* 3672 *of the Internal Revenue Code* to add as subparagraph (b) thereof the following:

> "(b) (1) *Exception in Case of Securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner prescribed in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser, of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.
>
> "(2) *Definition of Security.*—As used in this subsection the term 'security' means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing negotiable instrument; or money.

"(3) *Applicability of Subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose."

The reason for the adoption of *Section* 401 *of the Revenue Act of* 1939 is set forth in the *Report of the Ways and Means Committee on Section* 401 *of the Revenue Act of* 1939 in the following language:

"The chief purpose of section 401 is to amend section 3672 by adding a new subsection (b) dealing with securities. * * *.

"The new provisions dealing with securities are considered necessary because of a recent decision of a district court (United States v. Rosenfeld, E. D. Mich., 1938, 26 F. Supp. 433). This case held that a bona fide purchaser for value of shares of stock from a seller against whom a notice of lien for Federal income taxes had been duly filed prior to the sale took subject to the lien even though the purchaser did not have notice or knowledge of such lien. While it is true that the filing of the notice of the tax lien may constitute notice in the case of real property, it is inequitable for the statute to provide that it constitutes notice as regards securities. For example, when a broker purchases a security for his customer on the exchange, it is obviously impossible for him to check all the offices in which a notice of the tax lien may be duly filed to determine whether the security is subject to such lien. A like situation exists with respect to over-the-counter and direct transactions in securities. An attempt to enforce such liens on recorded notice would in many cases impair the negotiability of securities and seriously interfere

> with business transactions. The adoption of the amendment will remove an existing hardship without causing any undue loss of revenue."

See, also, *The Report of The Senate Finance Committee covering Section* 401 *of the Revenue Act of* 1939.

The adoption of *Section* 401 *of the Revenue Act of* 1939 is important, not only because it reaffirms a clearly defined Congressional purpose to protect bona fide purchasers and encumbrancers, but also because it once again indicates that Congress regards *Section* 3186 as the basic lien provision of the Federal Statutory System.

In amending *Section* 3186 to require the filing or recording of notice of the lien imposed thereby to make the same effective against bona fide purchasers or encumbrancers, Congress intended to deracinate the evils of the doctrine of *United States v. Synder*, 149 U. S. 210. See *United States v. Beaver Run Coal Company*, 99 F. (2nd) 610 (C.C.A. 3rd), *supra.* Congress enacted Section 401 *of the Revenue Act of* 1939, *amendatory of Section* 3186 *of the Revised Statutes of the United States* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) to protect bona fide purchasers and encumbrancers of securities against the lien accorded to Respondent for the collection of Internal Revenue Taxes even though notice of that lien has been filed or recorded as therein provided. See *The Report of the Ways and Means Committee on Section* 401 *of the Revenue Act of* 1939, *supra.* If the contention advanced by Respondent (and adopted by the District Court and the Circuit Court of Appeals) is sustained and *Section* 315 (*a*) is held to impose a lien separate and distinct from that embodied in *Section* 3186, those clearly enunciated Congressional purposes will be unfulfilled. If the construction urged by Peti-

tioner is adopted, the result sought to be accomplished by Congress is completely achieved. It is hardly reasonable to suppose that Congress left its object but half achieved and singled out the Federal Estate Tax to occupy a preferred position in this regard. To adopt the construction advanced by Respondent would be to thwart a plainly manifested Congressional intent and restore with respect to Estate Taxes (including such taxes on securities) the intolerable situation which existed with respect to all property under the doctrine of *United States v. Snyder*, 149 U. S. 210, *supra*, and with respect to securities prior to the enactment of *Section* 401 *of the Revenue Act of* 1939.

Not only would the decision of the court below if sustained run counter to a well defined Congressional policy, but it would produce absurd and inexplicable results. *Section* 315 (*b*) (*Section* 827 (*b*) *of the Internal Revenue Code*, see appendix) would accord to bona fide purchasers and encumbrancers acquiring property from a donee who received the same pursuant to a transfer under which the donor reserved to himself the income for life, complete protection against the lien for Estate Taxes. Yet an innocent vendee or mortgagee from a surviving tenant by the entirety finds his property saddled with a lien. A search for differences justifying such varying treatment is fruitless for no differences exist. The situation of the creator of a tenancy by the entirety and the donor who has reserved the income from transferred property are virtually identical, except that the former has reserved the right to only one-half of the income for life instead of all. The surviving tenant of an estate by the entirety and the donee under a transfer reserving the life income occupy positions which are indistinguishable in terms of substantial rights. Any lack of precise identi-

calness which may arise from the fact that the surviving tenant must outlive the creator of the tenancy in order to enjoy the fruits of the creator's beneficence is easily eliminated. Assume the retention (which does not in any way affect the operation of *Section* 315 (*b*)) by donor, who has reserved the income for life, of the oft reserved right of reversion in the event of the donee's death prior to that of the donor and the two cases become indistinguishable.

There is nothing in one case which would suggest inquiry into the possibility of unpaid estate taxes which is not equally present in the other. If it be thought that the loss of revenue which might result is sufficient to justify the visitation of the hardship of a secret lien on a bona fide purchaser from a surviving tenant of an estate by the entirety, it should be remembered that similar considerations should justify a similar depredation with respect to an innocent vendee or mortgagee whose transferor is a donee of property the income from which the donor has reserved to himself. It is unbelievable that Congress should have intended to bring about the arbitrary and capricious result which the interpretation of *Section* 315 (*a*), adopted by the court below, produces.

In the light of the foregoing considerations, the language of the Circuit Court of Appeals for the Third Circuit in *United States v. Beaver Run Coal Co.*, 99 Fed. (2nd) 610 is particularly worthy of note. In that case the court held that the lien of the United States for Federal Income Taxes which had *not* been filed or recorded as provided in *Section* 3186 did not prevail against a purchaser or encumbrancer *even though he possessed actual notice of the claimed lien.* In the course of its opinion the court said:

"It is a well established doctrine that a clear, unambiguous statute must be literally construed. Hamilton v. Rathbone, 175 U. S. 414, 20 S. Ct. 155, 44 L. Ed. 219; Thompson v. United States, 246 U. S. 547, 38 S. Ct. 349, 62 L. Ed. 876; Crooks v. Harrelson, 282 U. S. 55, 51 S. Ct. 49, 75 L. Ed. 156; Helvering v. New York Trust Co., 292 U. S. 455, 54 S. Ct. 806, 78 L. Ed. 1361. *If an apparently unambiguous statute contains hidden ambiguities, or if a literal construction would clearly defeat the object intended by Congress, or if a literal construction would result in absurdities so gross 'as to shock the general moral sense,' then the courts may be entitled to depart from the strict wording in order to give the statute a reasonable construction. Helvering v. New York Trust Co., supra, Crooks v. Harrelson, supra.*

"In the instant case, however, the literal interpretation of section 3186 does not contain hidden ambiguities, does not defeat the object intended by Congress and does not result in any shocking absurdity. Indeed, any possible absurdity resulting from such an interpretation is far less shocking than the situation existing prior to 1913 when titles to land, which had always been governed by state law, were clouded by the provisions of a federal statute * * *."

(Italics ours)

D

This Court should not follow the erroneous decision of the District Court for the Southern District of California in *United States vs. Security-First National Bank of Los Angeles, et al.*, 30 Fed. Supp. 113, on which the court below relied.

In reaching its decision that the lien herein sought to be foreclosed is entitled to priority over the lien of Petitioner's mortgages, the court below relied almost exclusively on the decision of the California District Court in *United States v. Security-First National Bank of Los Angeles, et al.*, 30 Fed. Supp. 113, appeal dismissed by *Stipulation*, 113 Fed. (2nd) 491 (C.C.A. 9th). That case involved an action by the United States of America to collect its claim for unpaid Estate Taxes through the enforcement of its lien therefor, against a certain parcel of real estate acquired by one of the defendants as the result of the foreclosure of a mortgage made by the estate of a decedent to a bona fide encumbrancer. The decedent had died on February 13, 1926 leaving an estate including the parcel of real estate in question on which a Federal Estate Tax was payable. An Estate Tax return should have been filed by February 13, 1927. In fact none was filed until February 2, 1933, nearly seven years after the decedent's death. Subsequent to the filing of the return the tax was assessed and appeared for the first time in the April and June 1933 assessment lists. On August 11, 1933, notice of the lien was filed by the collector pursuant to *Section* 3186. The mortgage under which the defendant claimed was made sometime prior to August 11, 1933, but the exact date of the mortgage does not appear. We may safely conclude, however, that the mortgage antedated the filing of the Estate Tax Return

by a wide margin. The court held that the lien of the United States for Estate Taxes was entitled to priority over the lien of defendant's mortgage. While that case reaches a conclusion which is in accord with the decision below, the failure of the court to give consideration to the crucial question which both that case and this case present and the bases on which the court rested its decision, counsel this Court to give it little weight as a precedent.

The court in the *Security-First National Bank* case rejected at the outset the contention of defendant's counsel that the lien referred to in *Section* 315 (*a*) did not, as against a bona fide purchaser, attach at the date of the decedent's death. The court, however, conceded that the vital question was not the date on which the lien attached, but whether it was entitled to priority as against a subsequent bona fide purchaser. The defendant in that case then argued that the provisions of *Section* 3186, requiring the recording of notice of the lien imposed thereby (to make it effective against bona fide purchasers and encumbrancers), should be read into *Section* 315 (*a*). The court attempts to answer that argument with the statement that this argument assumes that there can be but one lien to enforce a tax in favor of the Government. It is doubtful if the argument of the defendant in the *Security-First National Bank* case was so premised. Whether it was or not, however, is immaterial. We concede that Congress has the power to impose a hundred liens for the same tax if it so desires. The real question which this case presents and which the *Security-First National Bank* case presented is not whether Congress has the power to impose two liens for the same tax, but whether it did in fact exercise its undoubted authority

in this regard. The court in the *Security-First National Bank* case assumed rather than decided that Congress did assert its prerogative and did impose two separate and distinct liens (one by *Section* 315 (*a*), and one by *Section* 3186). Indeed the crucial question of whether those two sections imposed separate and distinct liens was not even considered by the court for the defendant in that case seems not to have even argued the point. The opinion of the Circuit Court of Appeals in the instant case indicates all too clearly that it gave insufficient independent consideration to this pivotal problem and placed implicit reliance on the conclusion of a court which gave it none at all.

The *Security-First National Bank* case quite frankly recognizes the harshness of the result which it reached. The court suggests that its conclusion must be presumed to be in accord with the intent of Congress for that legislative body permitted to remain unchanged for a period of twenty-three years a statute whose defect could have been cured by a simple amendment. This assertion is so completely untenable that it is difficult to conceive how the court could have seriously advanced it. It is true that the statute in question has remained unaltered since its original enactment, but the failure of Congress to act is hardly a reason for assuming that the result, which the *Security-First National Bank* case reached in 1939, has Congressional approbation. Since the original enactment of *Section* 209 *of the Revenue Act of* 1916 (the predecessor of *Section* 315 (*a*)) relatively few decided cases have involved its interpretation, or that of its successors. Prior to *Security-First National Bank* case there was not a single reported decision of a State or Federal Court which even considered the effectiveness of the lien

referred to in those sections, against a bona fide purchaser or encumbrancer. Perhaps the great paucity of decisions is accounted for by the fact that it required twenty-three years to toughen Respondent's conscience to the extent necessary for the presentation of the unconscionable argument which it advanced in the *Security-First National Bank* case and again in this case. Whatever may have been the reason, it is clear that Congressional approval cannot be inferred from its failure to alter a statute to avoid the harsh results of a nonexistent interpretation. It is much more reasonable to assume that Congress supposed that *Section* 315 (*a*) would receive the interpretation which Petitioner urges and that its surprise at the decision of the *Security-First National Bank* case was no less complete than that of the Bar.

The final argument of the court in the *Security-First National Bank* case is that its decision may be sustained on grounds of policy. It points out that under the provisions of *Section* 3186 the Collector knows the date of the inception of the lien since the lien takes effect when the assessment list is received and hence the Collector is able to file the required notice immediately upon the accrual of the lien. The same is not true says the court under the provisions of *Section* 315 (*a*) for the Collector has no way of learning whether an estate tax is due on the date on which the lien accrues without extensive investigation. That argument breaks down completely upon analysis. The Collector knows that under the construction placed on *Section* 315 (*a*) the lien therein referred to has its inception on the death of decedent. The taxes which this lien secures are then owing though not payable until a later date. He does not know the amount of the estate tax, if any, then owing by such decedent, but Congress imposed no requirement that the notice of lien

to be valid must contain the amount of the tax. Actually the only fact which the Collector is required to learn to be in full possession of all information necessary to enable him to file notice of the lien is the occurrence of the decedent's death. This information is available to him shortly after the Decedent's death for *Section* 304 (*a*) *of the Revenue Act of* 1926 (*Section* 820 *of the Internal Revenue Code*) enjoins upon an executor the duty of notifying the Collector of the death of the decedent whose estate he is administering. This notice must be filed within two months after the decedent's death or within a like period after the executor's qualification. To conclude that any substantial portion of the decedent's property will have been transferred or mortgaged during the short period of time between death and the giving of this notice is to assume a traffic in the property of decedent's estates which simply does not exist.

Even if it were true that the lien referred to in *Section* 315 (*a*) could not be made effective, without extensive investigation, against the whole world from the moment of its accrual, were the filing of notice required, that is no reason for assuming that Congress did not intend to require such filing as a condition precedent to effectiveness of that lien against bona fide purchasers and encumbrancers. It has never been the policy of the law to deny protection to an interest merely because such protection would qualify the rights of others. Even the cherished right of free speech has never been held to be absolute on the ground that to recognize any qualification of that right would impair its complete enjoyment.

The fallacy of the final argument of the court in the *Security-First National Bank* case becomes more apparent the more one examines it. The basic assumption

of that argument is that Congress by enacting *Section* 315 (*a*) intended to provide Respondent with a lien which can be made effective against the entire world from the date of the accrual of the tax, the collection of which it is designed to enforce. The court points to no actual indicia of such a legislative intent. Indeed, such evidence of Congressional purpose as exists points to a precisely contrary conclusion. The general tax lien statute (*Section* 3186), as applied to income taxes does not accrue from the date of the event, i. e., the receipt of taxable income, which gives rise to the tax. It does not even arise when the tax on that income becomes payable which is approximately seventy-five days after the end of the taxable year during which that taxable income is received. The lien dates from the date on which the assessment list is received by the Collector, which of necessity is subsequent (and, in case of a deficiency, long subsequent) to the time when the tax for which the lien is given, becomes payable. The court in the *Security-First National Bank* case suggests no reason to support its assumption that a completely different Congressional purpose exists with respect to Estate Taxes. Indeed, it would be impossible to adduce a reason, for the problem and method of collecting estate taxes is precisely the same as that of collecting Income Taxes. Both Income and Estate Taxes become payable at a time subsequent to the date of the occurrence of the event which gives rise to the tax. Income Taxes are payable within approximately seventy-five days after the close of the taxable period during which the receipt of the taxed income occurs. Estate Taxes are payable within fifteen months after the death of the decedent which marks the incidence of the tax. In both cases the taxpayer or his representative is required to file a return

of the tax payable and a summary of the facts which form the basis of the computation of the tax. In the case of neither tax will the Collector of Internal Revenue be able to ascertain without extensive investigation whether a tax is payable or its amount, until the taxpayer files the required return. Nor is there less likelihood that funds will be available for the collection of Estate Taxes than for Income Taxes because of the greater probability that the property, out of which Estate Taxes are payable, will be dissipated. Indeed, the reverse is true. Income and accumulated property of a living taxpayer have a much greater tendency to be fluid and to be dissipated than that of a decedent. In addition, the primary fund for the payment of Estate Taxes will be in the hands of a personal representative of a decedent who will be much less likely to squander the fund, not only because he is accountable to a court, but also because he may render himself personally liable for a tax by the dissipation of funds, the use and benefit of which he did not personally enjoy. In short, if it be assumed that the desideratum is a lien which is best calculated to insure the collectibility of the tax assessed, every reason exists for making the lien for income taxes more stringent than that for Estate Taxes. Yet clearly such is not the case for the lien for income taxes is hardly such as to insure maximum collectibility. As was pointed out above, the lien does not even arise until long after the tax is payable. It never becomes effective against bona fide purchasers and encumbrancers of securities and it becomes effective against such innocent vendees and lienees of other property only from the time of filing notice. The lien with which Congress has provided Respondent for the collection of Income Taxes is indeed far from a perfect lien. In view of this, it taxes one's credulity beyond

all permissible limits to assume that in the case of Estate Taxes, Congress accorded Respondent the perfect lien which dates from the event which gave rise to the tax, and from that moment on, is good against all the world, innocent vendees and mortgagees included. It has never been suggested that the requirement of filing notice of the lien for Income Taxes to make that lien effective against bona fide purchasers and encumbrancers placed the public revenue in jeopardy. Indeed, when *Section* 401 *of the Revenue Act of* 1939 was enacted to provide that the lien imposed by *Section* 3186 should not be effective against bona fide purchasers and encumbrancers of securities, Congress made it clear that it conceived that the benefits accomplished by that enactment far outweighed the evils which might arise from the loss of revenue resulting from that sweeping concession. See *The Report of the Ways and Means Committee on Section* 401 *of the Revenue Act of* 1939 quoted on page 26, *supra*. Any loss of revenue which might result from according *Section* 315 (*a*), the construction of which we urge would be infinitely smaller for that construction would still leave Respondent with a lien for Estate Taxes which has a much wider scope than that for Income Taxes. The adoption of that interpretation would provide Respondent with a lien having its inception at the date of the decedent's death and valid from that date, without the necessity of filing or recording, against the whole world with the exception of persons occupying the status of bona fide purchasers and encumbrancers.

We have felt it necessary to discuss *in extenso* the unsoundness of the bases and the fallaciousness of the hypotheses on which the court in the *Security-First National Bank* case rested its decision because the court below accepted without analysis (as did the District

Court in *United States v. Maguire, et al.*, 42 Fed. Supp. 337*) the conclusion reached in that case. The importance of the problem which this case presents and the results which will be produced if the decision of the court below is sustained, merit the fullest consideration of every phase of the arguments here presented, none of which appear to have been urged upon the court in the *Security-First National Bank* case. The brief, and almost cryptic opinion of the court below in the instant case indicates all too clearly a failure on its part to analyze completely the questions which this case involves in the light of the *arguments* presented.

II. If *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) is construed as imposing a lien which is effective against bona fide purchasers and encumbrancers without the necessity of filing or recordation of notice thereof, that section as so construed violates the Fifth Amendment of the Constitution of the United States.

The Fifth Amendment to the Constitution of the United States lays under interdict action on the part of Respondent which deprives its citizens of their property without due process of law. Primarily and fundamentally that constitutional prohibition is designed to insure the observance by the Government of the United States of the basic principles of fair play in its dealing with its citizens. It marks out a domain where a citizen may seek

(*) In this case the court solely on the authority of *Security-First National Bank* case held that the lien of a judgment based on a claim arising during the decedent's lifetime and rendered subsequent to his death was inferior to the lien of the United States for Estate Taxes not recorded until after the rendition of the judgment.

asylum from the arbitrary and capricious acts of the sovereign which tend to subvert those principles. *Section* 315 (*a*) given the construction adopted by the court below invades that protected zone.

It should be sufficient to bring the section in question within the scope of enactments condemned by the Fifth Amendment that, as interpreted by the Court of Appeals, it accords Respondent a secret lien and sanctions the expropriation of the property of an innocent purchaser in satisfaction of taxes owed by another and arising out of a transaction to which the impeccant owner is a complete stranger. A doctrine so replete with unfairness is offensive to the toughest conscience. The vice of the enactment under consideration does not, however, end there. If the construction sanctioned by the decision under review is adopted, we must attribute to Congress an intention of arbitrarily and unreasonably singling out, as the special object of confiscation, the property of a small segment of a larger class of its citizens all occupying precisely the same legal position.

The value of a decedent's gross estate for Estate Tax purposes includes the value of much property which is not part of his estate for purposes of administration. The property so included has in common the characteristic that death terminates a retained interest which is less than complete ownership. The principal categories into which property of this type falls are the following: (1) Property held by the decedent and another or others as joint tenants or as tenants by the entirety; (2) property subject to a transfer intended to take effect in possession or enjoyment at or after death; (3) property subject to a transfer containing a reserved power to alter or revoke the right of possession or enjoyment; (4) property sub-

ject to a transfer containing a reservation or right to income or the right to control the enjoyment thereof during the decedent's lifetime or a period fixed with reference thereto; and (5) property representing the proceeds of insurance payable to a specific beneficiary. *Section* 315 (*a*) provides that the lien therein described shall attach to the decedent's "gross estate" which as is pointed out below the Internal Revenue Code nowhere defines (see pages 49 and 52). *Section* 315 (*b*) extends that lien to all of the property falling into the various categories mentioned above with one exception. That exception embraces property held by a decedent and another as joint tenants or as tenants by the entirety. At another point in this brief (pages 49 to 52) that omission is urged upon this court as indicating that Congress did not intend that the lien for Federal Estate Taxes should extend to jointly held and entireties property. That lacuna in *Section* 315 (*b*) has an additional and deeper significance, for if the construction of that section approved by the court below is to prevail, both that section and *Section* 315 (*a*) offend the Fifth Amendment.

Section 315 (*b*) extends the lien described *Section* 315 (*a*) to the property which the former enumerates but limits the operation of that lien with respect to transferees of such property by specifically providing in the following language—

> "* * *. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth,"

that the lien shall not be valid as against bona fide purchasers from such transferees. This provision brings into sharp focus the arbitrary and capricious character of the unequal treatment which *Section* 315 (*a*), as construed by the court below, accords to an innocent purchaser from a surviving tenant of an estate by the entirety. If A transfers property to B reserving to himself the income for life and B after A's death sells the property to C, an innocent purchaser, C takes the property free of the lien to which it was subject in B's hands. If, however, A and B had been joint tenants or tenants by the entirety and B, after A's death, sells the property to C, the latter's good faith is no protection to him. He finds that property which he innocently acquired can be wrested from him to pay A's taxes arising out of a transaction to which he, C, is a complete stranger. This court has frequently called attention to the fact that the Fifth Amendment unlike the Fourteenth contains no provision prohibiting the denial of equal protection of the laws. *LaBelle Iron Works v. United States,* 256 U. S. 377; *Brushaber v. Union Pacific R. R. Co.,* 240 U. S. 1; *Steward Machine Co. v. Davis,* 301 U. S. 548; *Currin v. Wallace,* 306 U. S. 1; *Sunshine Anthracite Coal Co. v. Adkins,* 310 U. S. 381. It has never denied, however, that discrimination may be so great and unequal treatment so unjustifiable as to constitute arbitrary and capricious action amounting to confiscation which this Court has recognized as offensive to the Fifth Amendment. *Nichols v. Coolidge,* 274 U. S. 531. See also *Brushaber v. Union Pacific R. Co.,* 240 U. S. 1; *Barclay & Co. v. Edwards,* 267 U. S. 442. This Court will search in vain, as have we, for any reason founded on logic or policy which even faintly suggests a ground for denying to a bona fide purchaser from a surviving

tenant by the entirety the protection which is so freely accorded to the innocent purchasers from a donee who takes by a transfer of the type described in *Section* 315 (*b*). As interpreted by the court below, the enactment under consideration becomes the very avatar of legislative caprice, offensive to even the most elastic conscience.

This Court, through the late Justice Holmes, has chronicled its doubt as to whether transferees of the type mentioned in *Section* 315 (*b*) can constitutionally be made liable for the tax imposed on the estate of a decedent who is the source of the transferee's title. *Lewellyn v. Frick,* 268 U. S. 238, 251. That uncertainty is magnified where the person sought to be made liable for that tax is an innocent stranger who purchased in good faith from such a transferee and who has no connection with the transaction giving rise to the tax. Perhaps it was this increased distrust as to constitutionality which was the generating source of the protection which Congress provided for bona fide purchasers from the transferees enumerated in *Section* 315 (*b*) by enacting the portion thereof quoted above. Whatever may have been the basis for the inclusion of this protective clause, it would be unthinkable to suppose that Congress intended further to add to this welter of constitutional dubiety by according to one portion of a class of innocent purchasers different treatment from that given a class of such transferees, all similarly situated, whose liability for estate tax this Court has already branded as constitutionally uncertain. It is, however, unnecessary to strike down *Sections* 315 (*a*) and 315 (*b*) as violative of the Fifth Amendment. We submit that Congress intended no such arbitrary and discriminatory action as the decision of the court below attributed to the National Legislative Body by its con-

struction of the enactment under consideration. This Court has construed and should construe the Acts of Congress to avoid, if possible, any doubt as to their constitutionality. *Panama R. R. Co. v. Johnson*, 264 U. S. 375; *Lewellyn v. Frick*, 268 U. S. 238; *Hassett v. Welch*, 303 U. S. 303. The construction of *Sections* 315 (*a*) and 315 (b) which Petitioner urges avoids possible collision between those sections and the Fundamental Law. By interpreting *Section* 315 (*a*) as imposing no lien but as merely describing certain attributes of the lien imposed by *Section* 3186, which requires notice of that lien to be filed to make the same effective against bona fide purchasers, the necessity is obviated of imputing to Congress an intent to arm Respondent with that invidious instrument—a secret lien. In addition, it places on a parity innocent purchasers from a surviving tenant of an estate by the entirety and from the transferees described in *Section* 315 (*b*). The protection of all such bona fide purchasers then rests on the requirement of filing or recording and not on the entirety fortuitous circumstance that the vendor or mortgagor acquired his title by virtue of a transfer intended to take effect in possession or enjoyment at or after death rather than as the survivor of an estate by the entirety.

We are not unmindful of the fact that the second sentence of *Section* 315 (*b*) frees from the lien for estate taxes only property "sold to a bona fide purchaser." It might conceivably be contended that Petitioner is not in a position to object to the inequality (which *Sections* 315 (*a*), as construed by the court below and 315 (*b*) create) because such inequality exists only with respect to purchasers from transferees described in the latter section, and encumbrancers not being included in the lat-

ter section are all accorded equal treatment—namely a complete lack of protection. The answer to this question is twofold. In the first place, it is difficult to believe that the word "sold" is to be construed in the narrow sense of an outright transfer of title. While this question appears never to have been passed upon by the courts, it is fair to assume that Congress intended, in view of its consistent policy of protecting both purchasers and encumbrancers (see pages 23 to 31 of this brief) that the words "sold to a bona fide purchaser" should include a mortgage to a bona fide encumbrancer. Indeed, a mortgage may be brought within the precise wording of the statute for as a matter of legal theory a mortgage has been sometimes regarded as a sale upon a condition subsequent. However, it is not necessary to resort to such formalism for the courts have indicated that substantially similar language, namely, "a bona fide sale for an adequate and full consideration in moneys worth" used in several places in *Section* 811 *of the Internal Revenue Code* embraces transactions which are not sales in the narrow sense of that term. See *Root, et al., Executors v. United States,* 56 F. (2nd) 857 (D. C. Fla.); *Estate of Warner D. Hunt v. Commissioner,* 19 B.T.A. 624 (Acq.); *Goldman, et al., Executors v. Commissioner,* 11 B.T.A. 92 (Acq.). In the second place, Petitioner is a purchaser of the property which is the subject-matter of this suit. Its initial connection with that property was as mortgagee but those mortgages were foreclosed and at the foreclosure sale Petitioner became the purchaser. The fact that the sale was upon the foreclosure of Petitioner's mortgages is immaterial, so far as the present controversy is concerned, for this Court has itself said that for purposes of Federal Taxation such a sale is to be treated as any other sale. *Helvering v. Hammel,* 311 U. S. 504.

The constitutionality of *Section* 315 (*a*) has never been adequately explored. The question was not raised in either *United States v. Security-First National Bank of Los Angeles, et al.*, 30 Fed. Supp. 113, *appeal dismissed* 113 Fed. (2nd) 491 (C.C.A. 9th), or *United States v. McGuire, et al.*, 42 Fed. Supp. 337. Indeed, the same constitutional question, as is presented in this case, could have been raised in neither. In the former case the mortgagor was the estate, not as in the instant case, a transferee of the same general class as those described in *Section* 315 (*b*). The same is true of the latter case for there the encumbrancer was an unsecured creditor of the decedent at the time of his death whose lien arose by virtue of the reduction of that claim to judgment subsequent to death but prior to the filing by the Government of notice of its lien. In *United States v. Snyder*, 149 U. S. 210 no question of constitutionality was presented. That case dealt solely with the question of the relative priority of the lien imposed by *Section* 3186 (prior to its amendment to require filing or recording of notice to make it effective against bona fide purchasers) and that of a mortgage acquired in good faith and for value. This Court stated that the single question presented for its consideration was "whether the tax system of the United States is subject to the recording laws of the states" and that was all that this Court decided.

The District Court, on the constitutional issue, assumed rather than decided that *Section* 315 (*a*) given the construction which it accorded to that section, did not violate the Fifth Amendment (R. 240-243). The Circuit Court of Appeals expressly decided in favor of constitutionality but its decision is marked by almost a complete absence of any discussion of the point (R. 295). It apparently

was of the opinion that the provisions of *Section* 313 *of the Revenue Act of* 1926 *Sections* 825 (*a*) *and* 827 (*c*) *of the Internal Revenue Code*) were sufficient answer to the argument of unconstitutionality. The provisions relied upon by the Court of Appeals are substantial to the following effect: The executor may apply for a prompt determination of the amount of Estate Tax payable by the estate in his charge. Within one year from the date of such application (or if the application is made before the return is filed, then within one year from the date on which the return is filed), the Commissioner is required to determine the amount of tax. Upon the payment by the executor of the amount of the tax so determined, the executor is released from personal liability. This payment, however, does not release any part of the gross estate from the lien for any deficiency in tax subsquently determined, except where title to such part of the gross estate has passed to a bona fide purchaser. The court below seems to have reasoned that since these provisions afforded Petitioner a procedure for protecting itself against the lien of the Government, it may not complain, not having resorted to this procedure, that its property is appropriated in satisfaction of that lien. The difficulty with this argument is that its premise is false for Petitioner could not have availed itself of these provisions even if it had desired to do so. The application for a prompt determination of the tax under *Section* 313 *of the Revenue Act of* 1926 must be made by the *executor* and by him alone. Petitioner could not, therefore, have made the application. The same was true of its mortgagor, who was not the executor of Mr. Paul's estate, but the surviving tenant of an estate in specific property which she and John P. Paul held as tenants by the entirety. It is, therefore, difficult to conceive how either

Petitioner or its mortgagor would have been able to avail themselves of the suggested panacea. Conceivably a surviving joint tenant or the survivor of a tenancy of the entireties might be able to prevail on an executor to make application for the determination. There is nothing certain about this procedure, however, for there is no way in which the executor can be compelled to make the required application. It is not difficult to conceive of a case where a hostile or indifferent executor would ignore such a request on the part of a surviving tenant. It is likewise not difficult to envisage a situation where a decedent would have no estate subject to administration and hence no executor could be appointed. Under such circumstances a surviving tenant would be helpless. A protection dependent on so many contingencies is illusory and an illusory protection is hardly an adequate substitute for the aegis which *Section* 315 (*b*) affords to innocent purchasers from other transferees of a decedent.

Quite apart from what has been said in the preceding paragraph, it is extremely doubtful whether an application under *Section* 313 *of the Revenue Act of* 1926 would have accorded effective protection to Petitioner. That section discharges the executor from personal liability. However, the complementary provisions of that section do not operate to release any part of the gross estate from the lien unless (1) "the title to such part of the gross estate has passed" and (2) "to a bona fide purchaser for value." Respondent concedes, and there can be no doubt, that Petitioner as a mortgagee without notice is a bona fide purchaser. However, under the laws of the State of Michigan it is well settled that no title passes to a mortgagee. See *Ladue v. The Detroit & Milwaukee R. R. Co.*, 13 Mich. 280, 394; *Dawson v. Peter*, 119 Mich. 274, 280, 77 N. W. 997; *Equitable Trust Co. v. Milton Realty Co.*, 263 Mich. 673, 676, 249 N. W. 30. This

argument cannot be lightly dismissed on the ground that the statutory language may be broadly construed. Congress in enacting *Section* 313 did not phrase this release provision in the elastic language of sale or transfer. Instead it expressly made the divestiture of the lien dependent on whether "title has passed." Respondent may protest that it would never have taken such a position. The present case, however, is proof that Respondent neglects no contention, however inequitable, in seeking to enforce its lien for taxes.

III. The lien herein sought to be foreclosed does not in any event extend to any of the property herein involved in which John P. Paul at the time of his death possessed an interest as a tenant by the entirety.

Even though this Court should sustain the conclusion that Respondent's lien for Estate Taxes is valid against bona fide purchasers and encumbrancers still that lien would be enforceable only against such of the property as was not held by John P. Paul and his wife as tenants by the entirety at the time of the former's death.

Property passing to a surviving tenant of an estate by the entirety is not part of "the gross estate" of a decedent as that term is used in *Section* 315 (*a*). The statutes of the United States nowhere define the term "gross estate." *Section* 302 *of the Revenue Act of* 1926, *as amended* (*Section* 811 *of the Internal Revenue Code*) dealing with the concept of a decedent's gross estate does not attempt to define that concept. It simply provides that "the *value* of the gross estate of the decedent shall be determined by including the *value* at the time

of" the decedent's death "of all property, real or personal, tangible or intangible, wheresoever situated, except real property situated outside of the United States, to the extent of the interest therein of the decedent at the time of his death." That section then proceeds to enumerate other property which does not form a part of a decedent's estate for purposes of administration, the value of which is included in determining the gross amount upon which a tax is payable. Property of this latter class embraces property in which a decedent at the time of his death had an interest as a tenant in the estate by the entirety. Except for specific provisions (of *Section* 302 *of the Revenue Act of* 1926, *as amended*, and its predecessors) requiring the inclusion (in computing the value of a decedent's gross estate) of the value of the property therein described which is not subject to administration, the value of such property would not be includable even under the broad language of *Section* 302 (*a*) *of the Revenue Act of* 1926 (*Section* 811 (*a*) *of the Internal Revenue Code*). See *Helvering v. Safe Deposit & Trust Co.*, ... *U. S.* ..... 62 *S. Ct.* 925 (*decided April* 13, 1942); *Porter v. Commissioner*, 288 *U. S.* 436; *Davis v. United States*, 27 *Fed. Supp.* 698; *Estate of Gertrude L. Royce v. Commissioner*, 46 *B.T.A. No.* 147. The words "gross estate" have no inherent significance broad enough to include the interest of a decedent in property held by him and his surviving spouse as tenants by the entirety or in any property not subject to administration. The word "estate" clearly connotes only property subject to administration and the word "gross" simply serves to indicate that the estate without deduction for claims which have not become a lien against specific property at the date of a decedent's death is intended. The words "gross estate" as used in *Section* 315 (*a*) must have been intended only to embrace property which

is taxable under *Section* 302 (*a*) *of the Revenue Act of* 1926. Congress was fully cognizant of that inherent limitation of those words for had they been broad enough to encompass taxable property which is not subject to administration, *Section* 315 (*b*) would have been wasted legislative effort. This is made abundantly clear by the fact that as Congress amended *Section* 302 *of the Revenue Act of* 1926 (and its predecessors) to provide for the inclusion of the value of different types of property, not subject to administration, in the value of a decedent's gross estate, it amended *Section* 315 (*b*) (and its predecessors) to extend the lien to such newly added property. See *Section* 402 (*f*) *of the Revenue Act of* 1918, taxing the value of the proceeds of insurance in excess of $40,000 payable to a specific beneficiary and *Section* 409 *of the Revenue Act of* 1918 extending the lien for the tax to such proceeds and *Section* 803 (*a*) *of the Revenue Act of* 1932 amending *Section* 315 (*a*) to tax transfers under which the grantor reserved the income for life and *Section* 803 (*b*) *of the Revenue Act of* 1932 amending *Section* 315 (*b*) to extend the lien to such newly included property. This legislative history is significant in determining the property to which the lien for the tax extends. *John Hancock Mutual Life Insurance Co. v. Helvering,* ..... Fed. (2nd) ..... (App. D.C.) decided May 11, 1942, P. H. Par. 62, 718.

The lien referred to in *Section* 315 (*a*) extends to the decedent's "gross estate." Yet Congress deemed it essential to provide specifically and in clear and unmistakable terms that such lien should extend to four different types of property, the value of which is included in the value of decedent's gross estate but is not subject to administration. (See pages 40 to 43 of this brief).

The attributes of entireties and jointly held property are precisely the same as the property described in *Section* 315 (*b*). The only ground on which can be predicated the failure of Congress specifically to describe jointly held property and property held in an estate by the entirety in *Section* 315 (*b*) is that Congress did not intend the lien referred to in *Section* 315 (*a*) to attach to such property. That the exclusion of entireties property from *Section* 315 (*b*) is not accidental is attested by the fact that that section does not extend to other taxable propery not subject to administration, e. g. dower and curtesy interests and property passing under a general power of appointment. However, whether this omission was intentional or unintentional, we need not inquire. The important thing is that Congress did not subject property of this type to a lien, and because of that failure, no lien attaches to such property. It is well settled doctrine that the legislative intent to subject property to a lien for taxes must clearly appear and that such a lien will neither be created by implication nor enlarged by construction. *Andrew v. Munn,* 205 Iowa 723, 218 N. W. 526; *Little River Drainage District v. Houck,* 206 Mo. App. 283, 226 S. W. 72; *Archibald v. Maurath,* 92 N. J. Eq. 357, 113 A. 6.

The Circuit Court disposed summarily of the argument under this head with the citation of *Goodenough v. Commissioner,* 83 F. (2nd) 389 (C. C. A. 6th); *Robinson v. Commissioner,* 63 F. (2nd) 652 (C. C. A. 6th). Neither of these cases deal remotely with the problem here under consideration. They deal solely with the question of whether the value of entirety property is included in the value of decedent's gross estate. The question of whether such property is subject to a lien for estate taxes was neither presented nor decided in either case.

CONCLUSION

To sustain the decision of the court below is to perpetuate a doctrine which bristles with inequity. For Petitioner it means a loss to the extent of the tax, plus interest, payable by another, in a transaction to which it was a stranger. If Petitioner pays the tax to protect the mortgaged property which it acquired upon foreclosure, it will be poorer to the extent of its payment—an additional payment for which it never bargained. If it is unable to pay the tax, it may lose its entire investment which is many times the amount of the tax. What is more significant, however, is that for estates generally it will mean an absolute inability to secure loans at a time when mortgage money is a vital necessity—to pay debts, taxes and other expenses incident to administration. No lender will be willing to assume for ten years the risk that his property may be confiscated to satisfy the secret lien of the taxing sovereign which may be asserted long after all liability for estate tax has apparently been finally settled. The instant case eloquently attests the fact that such a risk is a real threat during every moment of the ten-year period for here the lien was asserted just one day short of the tenth anniversary of John P. Paul's death. For Respondent it will be a Pyrrhic Victory. It will have collected the tax in the instant case but for this small gain it will sacrifice liquidity in countless estates yet to be taxed.

If Respondent prevails it will mean that every lender who advanced money on, or purchased, property which formed a part of the estate of a decedent who died within

the last ten years will be faced with having his security or his purchase wrested from him to satisfy estate taxes as yet unassessed, payable by the estate of an individual with whom he has had no contact whatsoever. No amount of good faith will protect him. Nor can he console himself if the property on which he has a lien or which he purchased consists of negotiable securities. If the doctrine of the Court below is sustained real and personal property, negotiable securities and even money are equally vulnerable.

No amount of investigation can dispel the cloud of uncertainty in which the Court of Appeals' decision wraps all titles. In the case of securities, such as stocks and bonds, it would be virtually impossible even to ascertain whether title was traceable to the estate of a decedent who died within ten years of their acquisition. The evils implicit in such a doctrine were recognized by Congress and it aimed its shaft at those vices when it enacted *Section* 401 *of the Revenue Act of* 1939. (See pages 25 and 27 of this brief). The decision by the court below atrophys that effort and again clogs the channels of trade.

Where the lien for estate taxes involves real property, the abstract of title, on the basis of which title opinions are given and on the basis of which transactions running annually into the billions are consummated, is next to useless. The abstract would disclose that the estate of a decedent was the source of title and nothing more. It would not disclose the extent of the decedent's taxable estate, whether a return was filed, whether a tax was paid, or any of the essential facts. Even if a purchaser were to examine the inventory of the decedent's estate

and that inventory disclosed a taxable estate having a value less than the specific exemption, he could still not safely purchase the property or lend on it as security. Such an inventory would not disclose jointly held or entireties property, gifts in contemplation of death, gifts intended to take effect in possession or in enjoyment at or after death, *intervivos* transfers subject to a reserved power to alter the right of possession or enjoyment, property passing under a general power of appointment, interests of dower and curtesy or insurance payable to specific beneficiaries. The investigation necessary to determine the existence of such property with sufficient certainty to satisfy a careful title examiner would require a long and arduous search. Even after such a search the giving of a title opinion would be fraught with considerable hazard since one could never be quite certain that all of the necessary facts had been ascertained.

Respondent does not need the all embracing protection which the decision of the court below accords it. It is absurd to suggest that but for this protection dishonest taxpayers could forestall collection by fraudulent sales and mortgages. Such purchasers and encumbrancers would not be entitled to protection either because of their guilty knowledge or because they parted with no value. Fraud is hardly so rampant as to justify the infliction of such incalculable hardship on the many innocent vendees and lienees who will be affected. Respondent will sustain no injury if the doctrine of the court below is rejected for the proceeds of the mortgage or sale will immediately become subject to the lien. In fact Respondent's position may be improved since the proceeds will be liquid while the property sold or mortgaged (such as land) may not.

The grave and far reaching consequences of sustaining the decision of the court below, which are chronicled above attest the importance and the fundamental and vital character of the problem which this case involves. Never durnig the quarter century which elapsed since *Section* 209 *of the Revenue Act of* 1916 (predecessor of *Section* 315 (*a*)) was first enacted has this Court been called upon to construe its provisions. The interpretation of those sections has been confined to cases which have never reached this Court. The effectiveness of the lien referred to in *Section* 315 (*a*) against innocent purchasers and encumbrancers was first passed upon in 1939 by the California District Court in *United States v. Security-First National Bank of Los Angeles,* 30 Fed. Supp. 113. That case never reached the Circuit Court of Appeals the appeal having been dismissed by stipulation 113 F. (2nd) 492 (C. C. A. 9th). The consideration which that case gave to the important questions which this appeal present was hardly based on the searching analysis which the problem merits. This was undoubtedly due in a large part to the fact that many of the considerations here urged were, not there called to the Court's attention. The District Court in *United States v. Maguire,* 42 Fed. Supp. 337 accepted the conclusions of the Security-First National Bank case at face value. The brief decision of the court below leans heavily on the *Security-First National Bank* case and indicates that inadequate independent consideration and analysis was given to the arguments which this Petitioner advanced, many of which are set forth in this brief. It would be indeed regrettable if, on the basis of so inadequate a body of authority, *Section* 315 (*a*) were to continue, as it is under the doctrine of those cases, "an unfocused threat" to countless

property located throughout the United States. No Congressional enactment should be given that effect until this Court has spoken.

We respectfully submit that the writ of certiorari should be granted as prayed in our petition.

Respectfully submitted,

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CLEVELAND THURBER,
EDWARD S. REID, JR.,
EMMETT E. EAGAN,
Attorneys for Petitioner.

APPENDIX

Section 3186 *of the Revised Statutes of the United States* (*Act of July* 13, 1866, *c.* 184, *Sec.* 9, 14 *Stat.* 107 *as revised and amended by an Act of March* 1, 1879, *c.* 125, *Sec.* 3, 20 *Stat.* 331) *as amended by Act* 451, *March* 4, 1913 (*c.* 166, 37 *Stat.* 1016,) *by an Act of February* 26, 1925, *c.* 344, 43 *Stat.* 994, *by Section* 613 *of the Revenue Act of* 1928, *by Section* 509 *of the Revenue Act of* 1934 *and Section* 401 *of the Revenue Act of* 1939, *now known as Sections* 3670 *to* 3677 *of the Internal Revenue Code,* as amended, reads as follows:

"§3670. Property subject to lien

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

"§3671. Period of lien

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

"§3672. Validity Against Mortgagees, Pledgees, Purchasers, and Judgment Creditors

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee,

pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) (1) *Exception in Case of Securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner provided in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase, such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

"(2) *Definition of Security.*—As used in this subsection the term 'security' means any bond, debenture, note, or certificate, or other evidence of

indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(3) *Applicability of Subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose."

"§3673. Release of lien

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) *Liability Satisfied or Unenforceable.* The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) *Bond Accepted.* There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations."

"§3674. Partial Discharge of Property

(a) *Property Double the Amount of the Liability.* Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) *Part Payment.* Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States."

"§3675. Effects of certificates of release or Partial Discharge

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished."

"§3676. Single Bond Covering Release of Lien and Payment of Income Tax Deficiency

The Commissioner, with the approval of the Secretary, may by regulation provide for the accept-

ance of a single bond complying both with the requirements of Section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of subsection (b) of section 3673."

"§3677. Extended Application for Provisions Relating to Release or Partial Discharge

Sections 3673, 3674, 3675, and 3676 shall apply to a lien in respect of any internal revenue tax, whether or not the lien is imposed by this subchapter."

Section 315 *of the Revenue Act of* 1926, *as amended by Section* 613 (*b*) *of the Revenue Act of* 1928 *and by Sections* 803 *and* 809 *of the Revenue Act of* 1932, *now known as Section* 827 *of the Internal Revenue Code* reads as follows:

"§827. Lien for Tax

(a) *Upon gross estate.* Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) *Upon Property of Transferee.* If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession and enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the

tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(c) *Continuance after Discharge of Executor.* The provisions of section 825 shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 156

THE DETROIT BANK, formerly The Detroit Savings Bank, a Michigan Banking Corporation,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the Circuit Court of Appeals for the Sixth Circuit

PETITIONER'S BRIEF

Official Reports of Opinions Rendered in the Courts Below

The opinion of the District Court (R. 229-243) is reported in 41 *Fed. Supp.* 41.

The opinion of the Circuit Court of Appeals (R. 292-296) is reported in 127 *Fed.* (2*nd*) 64.

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF SUPREME COURT IS INVOKED

This is a civil suit in equity arising under the laws of the United States providing for internal revenue and the

collection thereof (R. 100). The Respondent, The United States of America, instituted this action, as plaintiff, to foreclose its lien for Federal Estate Taxes against fifty parcels of real estate located in the City of Detroit, Michigan, all of which were at one time owned by John P. Paul and Lena Paul, his wife, as tenants by the entirety, to collect a deficiency in Federal Estate Taxes in the amount of $23,271.84 and interest thereon assessed against the estate of John P. Paul. The defendants are encumbrancers (some of whom, including Petitioner, have foreclosed their liens and have become owners of the encumbered property as a result of their purchase at the foreclosure sale) of property which formerly belonged to John P. Paul and his wife, as tenants by the entirety, the State of Michigan and its political subdivisions, the County of Wayne and the City of Detroit, having liens against the property in question for unpaid real estate taxes and the descendents of John P. Paul and his wife (R. 229). The case was tried by the District Court upon a stipulation of facts supplemented by some testimony. The decree in the District Court in general granted the relief prayed for in the Bill of Complaint, except with respect to those parcels of real estate which were encumbered prior to the death of John P. Paul (R. 247-256). Petitioner and eight of the other defendants, including the State of Michigan and its political subdivisions, the County of Wayne and the City of Detroit, appealed from that decree to the United States Circuit Court of Appeals for the Sixth Circuit which affirmed the decree of the District Court (R. 289-291).

The statutory provision under which the jurisdiction of this Court is invoked is *Section* 240(*a*) *of the Judicial Code, as amended by the Act of February* 13, 1925, 43 *Stat.* 938, 28 *USC* 347(*a*). The judgment of the Circuit

Court of Appeals for the Sixth Circuit was entered on April 8, 1942 (R. 290), this case having been docketed in said Circuit Court of Appeals as No. 8988. A petition for certiorari directed to the Circuit Court of Appeals for the Sixth Circuit was filed with this Court on June 17, 1942, and said petition was granted on October 12, 1942. This case is on certiorari from the Circuit Court of Appeals for the Sixth Circuit. Since *Section 240(a) of the Judicial Code, as amended,* makes it competent for the Supreme Court of the United States to review by certiorari any case in a Circuit Court of Appeals, certiorari having been granted, the jurisdiction of this Court is established.

STATEMENT OF CASE

At the time of his death on May 5, 1926 (R. 229) John P. Paul and his wife, Lena Paul, owned, as tenants by the entirety, a considerable number of parcels of real estate located in the City of Detroit, Michigan (R. 230-231). Two of these parcels were then encumbered by mortgages held by Petitioner, and subsequently (between October 9, 1926, and June 22, 1931) Lena Paul, as survivor of herself and her husband, or the children of John and Lena Paul, to whom Lena Paul conveyed title, mortgaged ten additional parcels to Petitioner (R. 106, 107, 109-111). All of these mortgages were acquired by Petitioner for value, in good faith and without any knowledge that Respondent had or claimed to have any interest in the property covered by these mortgages (R. 239). Default occurred in all of these mortgages, and Petitioner thereupon proceeded to foreclose all of these mortgages and to become the purchaser of all of the encumbered

properties at the foreclosure sales thereof (R. 233, 234, 235-239). The foreclosure sales were all completed prior to May 4, 1936 (R. 233, 234, 235-239).

On May 4, 1936 (just one day short of the expiration of Respondent's lien), the present suit was instituted (R. v) and Petitioner then learned for the first time that Respondent claimed a lien on all of the property on which Petitioner had held mortgages and of which it believed itself to be the absolute owner (R. 239). The Bill of Complaint alleged and the evidence adduced upon the trial established the following facts: After Lena Paul (describing herself as "widow of John P. Paul and joint owner of all of his property") had filed, on July 5, 1927, an Estate Tax Return disclosing a liability of $3,450.00 (R. 229), which was duly paid (R. 229) the Commissioner of Internal Revenue on March 14, 1930 asserted a deficiency in Estate Taxes of $23,271.84 against her husband's estate (R. 229, 230). An appeal was taken to the Board of Tax Appeals and on November 4, 1932, the Commissioner's determination was upheld (R. 230). No appeal was taken from the decision of the Board of Tax Appeals, and on February 19, 1933, the amount of the deficiency, together with interest in the amount of $8,080.20, was assessed against John P. Paul's estate (R. 230). No part of this deficiency was ever paid (R. 230).

All but two of Petitioner's mortgages antedated the assertion of the deficiency by the Commissioner. The two mortgages which were made subsequent to the date of the deficiency notice were made two years prior to the assessment of the deficiency (R. 106, 107, 109-112, 229-230).

The case was tried by the District Court on a stipulation of facts supplemented by testimony. It found that Petitioner acquired all of the mortgages, which it held,

for value, in good faith and without any knowledge that Respondent had or claimed to have any lien on or with respect to any of the property covered by those mortgages (R. 239). The District Court further found that the lien asserted in the present proceedings arose at the date of John P. Paul's death and that, even though unrecorded, was superior in right to such of Petitioner's mortgages as were made subsequent to John P. Paul's death (R. 247). Accordingly the Court decreed that the property covered by these mortgages should be sold in satisfaction of the lien asserted by Respondent (R. 249). It determined, however, that Respondent's lien for Estate Taxes was subsequent in time and inferior in right to such of Petitioner's mortgages as antedated John P. Paul's death (R. 248).

The District Court's decision and that of the Circuit Court of Appeals are predicated on the theory that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien for the collection of Estate Taxes which is separate and distinct from the general tax lien created by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) and that the provisions of the latter section, requiring that notice be filed to make the lien imposed by that section valid as against bona fide purchasers and encumbrancers, have no application to the lien referred to in *Section* 315 (*a*) *of the Revenue Act of* 1926. Both the District Court and the Circuit Court of Appeals rejected Petitioner's contention that, as so construed, *Section* 315 (*a*) *of the Revenue Act of* 1926 violated the Fifth Amendment of the Constitution of the United States and held untenable Petitioner's position that the lien described in that section in no event attaches to property held by a decedent and his spouse, as tenants by the entirety.

SPECIFICATION OF ERRORS RELIED ON

The Circuit Court of Appeals erred in the following respects:

1. In affirming the decree of the District Court.

2. In deciding that the lien referred to in *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) is separate and distinct from that imposed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

3. In determining that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien *ex proprio vigore*.

4. In determining that the lien herein sought to be foreclosed is valid against bona fide purchasers and encumbrancers for value, even though no notice of such lien is filed or recorded as provided in *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

5. In following the decision of the Court in *United States v. Security-First National Bank of Los Angeles*, 30 *Fed. Supp.* 113 (*D. C. Cal.*) *Appeal dismissed* 113 *Fed.* (2*nd*) 491 (*C.C.A.* 9*th*).

6. In failing to determine that if *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) is construed as imposing a lien which is effective against bona fide purchasers and encumbrancers for value (and particularly such purchasers and encum-

brancers from a surviving tenant by the entirety) without filing or recording, that section as so construed violates the Fifth Amendment of the Constitution of the United States.

7. In determining that the lien herein sought to be foreclosed attaches at any time to property formerly owned by a decedent and his spouse as tenants of an estate by the entirety.

SUMMARY OF ARGUMENT

Petitioner contends that the judgment of the Circuit Court of Appeals is erroneous for the following reasons:

1. The Circuit Court of Appeals erroneously decided that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien which is separate and distinct from that prescribed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*). Actually the lien under foreclosure must be that imposed by the latter section for the former section imposes no lien *ex proprio vigore*, but merely describes certain incidents (such as duration and the property to which the lien attaches) of the lien imposed by *Section* 3186 *of the Revised Statutes* as applied to estate taxes. The legislative history of those two sections and the clearly defined Congressional policy of protecting bona fide purchasers and encumbrancers demonstrates beyond question that *Section* 315 (*a*) *of the Revenue Act of* 1926 should receive this

construction. This interpretation is consistent with statutory language; effectuates the intent of Congress and avoids the harsh and grossly absurd results which will follow from the construction of this section adopted by the Court below.

Since *Section* 3186 *of the Revised Statutes* (*and not Section* 315 (*a*) *of the Revenue Act of* 1926) is the generating source of the lien involved in these proceedings, that lien is inferior to the lien of the mortgages held by Petitioner because notice of that lien was not filed, as provided in that section, until long after the lien of those mortgages arose.

2. If the decision of the Circuit Court of Appeals properly construes the provisions of *Section* 315 (*a*) *of the Revenue Act of* 1926, that section as so construed violates the Fifth Amendment to the Constitution of the United States. This is so, not only because it thus imposes a secret lien, valid without recordation, against bona fide purchasers and encumbrancers, but also because protection against this secret lien is arbitrarily and capriciously denied to bona fide purchasers and encumbrancers from a surviving tenant of an estate by the entirety, while complete protection with respect to this lien is accorded innocent vendees and mortgagees from other transferees of property not subject to administration, the value of which is includable in the value of the decedent's gross estate for Estate Tax purposes.

3. Even if the interpretation accorded by the court below to *Section* 315 (*a*) *of the Revenue Act of* 1926 is proper and that section as so construed does not violate the Fifth Amendment of the Con-

stitution of the United States, Respondent is still not entitled to the relief granted it by the judgment which this Court is asked to review. Foreclosure was decreed against property which the decedent and his wife owned at the time of decedent's death, as tenants by the entirety, notwithstanding the fact that in no event does the lien under foreclosure at any time attach to property held in such a tenancy.

REFERENCE TO STATUTORY PROVISIONS

During the course of the pages of this brief which follow Petitioner will have occasion to refer frequently to *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*), *Section* 315 (*b*) *of the Revenue Act of* 1926, *as amended* (*Section* 827 (*b*) *of the Internal Revenue Code, as amended*), and *Section* 3186 *of the Revised Statutes, as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code as amended*). In the interest of readability and economy of expression Petitioner will frequently refer to these sections respectively, simply as "*Section* 315 (*a*)," "*Section* 315 (*b*)" and "*Section* 3186." Those sections are set forth in an appendix to this brief.

ARGUMENT

I. The lien herein sought to be foreclosed is imposed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

A

PREFACE

This branch of the case involves an interesting and difficult problem of statutory construction. The statutes to be construed are *Section* 315 (*a*) *of the Revenue Act of* 1926, *as amended* (*Section* 827 (*a*) *of the Internal Revenue Code*) and *Section* 3186 *of the Revised Statutes as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code, as amended*).

The pertinent provisions of *Section* 315 (*a*) *of the Revenue Act of* 1926 read as follows:

> "* * *. Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. * * *."

The applicable portions of *Section* 3186 *of the Revised Statutes* are the following:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien

> in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector * * *."

It is Petitioner's position that *Section* 315 (*a*) imposes no lien *ex proprio vigore* and that the lien to which that section refers is not a separate and distinct lien, but is rather the lien imposed by *Section* 3186. It is Petitioner's further contention that Respondent, in the present proceeding, must be attempting to foreclose the lien prescribed by *Section* 3186 for that is the only lien which Congress has conferred upon it for the collection of Estate Taxes. Petitioner takes the position that the only purpose of *Section* 315 (*a*) is to prescribe certain incidents of the lien imposed by *Section* 3186, designed to adapt that lien, in so far as is necessary, to the collection of Estate Taxes.

If, in construing *Section* 315 (*a*), one were to confine one's self exclusively to the language used, one might with equal plausibility reach two different conclusions—one that that section was intended to impose a lien; the other that the section imposes no lien but merely describes certain attributes of a lien imposed by another statutory provision. The words and grammatical construction of that section describe the idea of duration and character of a thing theretofore in existence as aptly as they suggest the concept of creation.

The problem of statutory construction involves more than the application of dictionary definitions to the words in which a legislative enactment is couched. "The meaning of a sentence may be more than that of the separate words as a melody is more than the notes." *Gregory v. Helvering*, 69 F. (2nd) 809 (C.C.A. 2nd). Where, as in the instant case, the language of the statute is susceptible of two different interpretations, that interpretation should be selected which appears most consonant with the probable purpose of the legislative body which enacted it and which avoids absurd and unreasonable results. Competing interpretations of a statutory provision must be weighed in the light of legislative history and the manner in which that provision operates on transactions claimed to fall within the ambit of its intended operation. *Helvering v. New York Trust Co.*, 292 U. S. 455.

B

The Legislative History of *Section* 315 (*a*) *of the Revenue Act of* 1926, *as amended, and of Section* 3186 *of the Revised Statutes* clearly demonstrates that the former section was not intended to impose a lien *ex proprio vigore*.

The ancestor of modern Federal Tax Liens, conferred on Respondent to aid it in the collection of taxes which it imposes, is *Section* 3186 *of the Revised Statutes of the United States of* 1879. This section was a codification of an Act of July 13, 1866 in which the forerunner of *Section* 3186 *of the Revised Statutes* first appeared. See *c.* 184,§9, 14 *Stat.* 107. *Section* 3186 *of the Revised Stat-*

utes, therefore, dates from 1866. That section when enacted applied, and still applies, to "any tax" and imposes a lien on "all property" of the taxpayer. Its application is general in the broadest possible sense. It was in existence prior to the adoption of the Sixteenth Amendment to the Constitution of the United States and the Revenue Acts enacted thereunder, including those imposing Federal Estate Taxes. *Section* 3186 has, therefore, served as a nucleus around which were built subsequent lien provisions appearing in Revenue Acts imposing specific types of taxes. It is, therefore, important to examine the legislative process by which Congress built subsequent legislation about that nucleus.

Section 3186 (*which was the Act of July* 13, 1866, c. 184, §9, 14 *Stat.* 107, *as revised and amended by an Act of March* 1, 1879, *c.* 125, §3, 20 *Stat.* 331), originally provided as follows:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person."

Prior to the enactment of the first Revenue Act imposing an income tax pursuant to the Sixteenth Amendment to the Constitution of the United States, Congress by *Act* 451, *passed March* 4, 1913, *c.* 166, 37 *Stat.* 1016, added the following proviso to *Section* 3186 *of the Revised Statutes:*

"Provided, however, That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the District court of the district within which the property subject to such lien is situated: Provided further, That whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, and in the State of Louisiana in the parishes thereof, and in the States of Connecticut, Rhode Island, and Vermont in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records of the towns and cities, then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, or in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records in the States of Connecticut, Rhode Island, and Vermont of the towns or cities within which the property subject to the lien is situated."

When Congress enacted the first income tax law pursuant to the Sixteenth Amendment in the Fall of 1913, it was confronted with the problem of selecting methods of enforcing the tax which it imposed. One of the most ancient and time-honored methods of enforcing collection of taxes was by the imposition of a lien. It is hardly to be assumed that Congress is marshalling methods of enforcement of the newly imposed income taxes dismissed from its consideration the ancient and efficient method of imposing a lien. The Common Law lien of the sovereign

for the collection of taxes has never existed in favor of the United States. *United States v. The State Bank of North Carolina*, 6 *Peters* 29; *Equitable Trust Company v. Connecticut Brass & Manufacturing Corporation*, 290 F. 712 (C.C.A. 2nd); *United States v. Middle States Oil Corporation*, 18 F. (2nd) 231 (C.C.A. 8th); *In Re Wyley Co.*, 292 F. 900 (N.D. Ga.). If the device of lien was to be included in Respondent's arsenal of weapons for enforcement, it was necessary that there be express statutory provision therefor. In providing the Government with a lien, Congress did what it did with respect to all other administrative provisions. It adopted a policy of taking existing statutory provisions applicable to Internal Revenue Taxes generally and made only such changes as were necessary to make them function efficiently in their new surroundings. It did not adopt a whole new set of administrative provisions, separate and distinct from those in force with respect to existing Internal Revenue Taxes. In short, it built its system of the administration and enforcement of income taxes into the existing scheme of administration and enforcement of other Internal Revenue Taxes.

In the existing scheme of things, it found *Section* 3186, which provided a lien for "all taxes" on "all property" of the taxpayer. This it found sufficient to arm those charged with the enforcement of income taxes with the desired lien. Congress did not enlarge or diminish the lien provided by *Section* 3186 but accepted it as it was. *Section* 3186 remains today the basic and indeed the only lien provision for the enforcement of income taxes.

In 1916, three years after the imposition of the first modern income tax, Congress enacted the first Federal Estate Tax. The policy of Congress of building into

the existing superstructure of methods of administration and enforcement of Internal Revenue Taxes generally, the system of administration and enforcement of a newly enacted tax, had not changd. In adopting a system of administering and collecting the newly imposed Federal Estate Tax, Congress started with the assumption that existing methods of administration and collection were to be adopted. Congress did not leave this matter to inference; it so provided in language which leaves no doubt of its intent. *Section* 211 *of the Revenue Act of* 1916, the second from the last section in Title II of that Act (which imposed the first Federal Estate Tax) provided as follows:

> "That all administrative, special and general provisions of law, *including the laws in relation to the assessment and collection of taxes* not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions.'
>
> (Italics supplied)

One of the "laws in relation to the collection of taxes" then in existence was *Section* 3186, which provided a lien for "any tax" on "all property" of the taxpayer.

Is it reasonable to assume that, with *Section* 3186 before it, the express terms of which made that section applicable to the Estate Tax which it proposed to enact, Congress provided Respondent (by adopting *Section* 209 *of the Revenue Act of* 1916, the predecessor of and identical with *Section* 315 (*e*) *of the Revenue Act of* 1926), with a lien separate and distinct from and in addition to that already provided by *Section* 3186? Of is it more reasonable to suppose that by including *Section* 209 *in the Revenue Act of* 1916, Congress merely intended to

provide that the lien imposed by *Section* 3186 as applied to Estate Taxes should attach, not when the assessment list was received by the Collector, but rather at the date of the decedent's death, (see, *Rosenberg v. McLaughlin*, 66 F. (2nd) 271 (C.C.A. 9th)), and that the lien imposed by *Section* 3186 should from that time attach to the gross estate of the decedent and continue in existence (unless the tax was sooner paid in full) for a period of ten years. In view of the avowed Congressional policy of utilizing existing methods of administration and enforcement for newly exacted taxes rather than adopting new methods of administration and enforcement, the latter is the only reasonable construction.

This conclusion is reinforced by the obviously incomplete character of *Section* 315 (*a*). If Congress had intended that section to be a separate, distinct and self-operating provision, it is reasonable to suppose that the National Legislative Body would at least have specified in whose favor the lien therein mentioned runs. *Section* 315 (*a*) is, however, completely silent in this regard. Indeed, if that section is to be regarded as a self-contained entity, as Respondent contends, it would seem reasonable to conclude that the lien to which that section refers runs in favor of the Commissioner of Internal Revenue, since he alone is given authority to release the lien. In that event, the Commissioner of Internal Revenue and not the Respondent would be the proper party plaintiff in this action. The explanation of this apparent hiatus in *Section* 315 (*a*) must be that Congress in enacting that section did not intend to impose a lien but was merely describing certain attributes of a lien which it had already imposed by *Section* 3186 and which by the specific

terms of that section ran in favor of the United States. No less significant in this regard than the failure of *Section* 315 (*a*) to specify in whose favor the lien therein mentioned runs, is its omission of the following language (or language similar thereto) contained in *Section* 3186: "(including any interest, penalty, additional amount or addition to such tax, together with any costs which may accrue in addition thereto)." The inclusion of this language in *Section* 3186 embodies a Congressional judgment that the word "tax" standing alone is not sufficiently broad to include interest, penalties and the other additional amounts described in the parenthetical language quoted above. Respondent, in the present proceeding, does not limit its claim to the amount of the unpaid tax. It seeks to recover interest as well. This it is not entitled to recover if *Section* 315 (*a*) is separate and distinct from *Section* 3186. To sustain its right to recover interest, as well as its right to maintain this suit, Respondent is forced to borrow surreptitiously from *Section* 3186 to supply the deficiencies in *Section* 315 (*a*). Apparently Respondent looks on *Section* 3186 much in the same fashion as the English Gentleman of the Mid-Victorian Era regarded the money lenders who financed their improvidence. It gladly borrows the aid of that section when it finds such assistance necessary to achieve its purpose but denies both the debt and the lender when either seeks even a passing nod of recognition.

Section 3186 provided, when the *Revenue Act of* 1916 was enacted, and still provides that the lien imposed by that section shall attach when the assessment list is received by the Collector "unless another date is specifically fixed by law." With this provision in mind, Congress exercised its reserved right of specification and

enacted *Section* 209 *of the Revenue Act of* 1916 to make the lien of *Section* 3186 attach at the date of the decedent's death. This change Congress undoubtedly conceived necessary to forestall claims by beneficiaries of a decedent's estate that distribution freed them of the obligation to apply the distributed property in satisfaction of unpaid estate taxes and to make effective as against such beneficiaries the remedy of distraint. See, *Rosenberg v. McLaughlin*, 66 Fed. (2nd), 271 (C.C.A. 9th). Since a dead man is technically incapable of owning any property, death necessarily marks the transmission of "all property and rights in property, whether real or personal belonging to" the decedent to his personal representative for administration and distribution. Such property and property rights become transmuted into the decedant's "estate". By providing in *Section* 315 (*a*) that the lien imposed by *Section* 3186 should, as applied to estate taxes, attach to the "gross estate" of a deceased taxpayer, Congress merely recognized that transmutation. The adjective "gross" was used to insure that the lien would encompass all of the property comprising the "estate" undiminished by claims arising *inter vivos* which had not become a lien against specific property at the date of death and hence did not reduce the decedent's interest in specific property. Because the estate tax is imposed on an amount which includes the value of property which does not technically belong to the decedent (e. g., property transferred in contemplation of or intended to take effect in possession or in enjoyment at or after death) Congress extended the lien imposed by *Section* 3186 to certain types of such property by enacting *Section* 315 (*b*). It did not, however, extend this lien to property held by the decedent and another, as tenants by the entirety. (See pages 49 to 53 of this brief.)

Section 315 (*a*) specifically limits the duration of the lien imposed by *Section* 3186 to ten years as applied to Estate Taxes. *Section* 3186 does not specifically prescribe the period of enforceability of the lien thereby imposed and Congress apparently deemed it desirable to mark its termination as applied to estate taxes. Presumably it selected the ten-year period as one which would approximate the maximum period of time during which an estate was likely to be in the process of administration.

Section 3186 has remained in force since its passage in 1866 and since 1913 has contained provisions requiring the filing of notice of the lien imposed thereby to make that lien valid as against bona fide purchasers and encumbrancers. *Section* 209 *of the Revenue Act of* 1916 (describing certain attributes of the lien imposed by *Section* 3186 as applied to the collection of Estate Taxes) was reenacted as *Section* 409 *of the Revenue Act of* 1918, as *Section* 409 *of the Revenue Act of* 1921, as *Section* 315 (*a*) *of the Revenue Act of* 1924 and finally as *Section* 315 (*a*) *of the Revenue Act of* 1926. In each of these Revenue Acts there was a provision substantially similar to *Section* 211 *of the Revenue Act of* 1916 making applicable to the taxes imposed by those Revenue Acts provisions of existing law in relation to the assessment and collection of taxes, including *Section* 3186. See *Section* 1305 *of the Revenue Act of* 1918, *Section* 1300 *of the Revenue Act of* 1921, *Section* 1100 *of the Revenue Act of* 1924, and *Section* 1100 *of the Revenue Act of* 1926. What has been said above with respect to the relation between *Section* 3186 and *Section* 209 *of the Revenue Act of* 1916 *applies* equally well to the relationship between the former, and sections reenacting *Section* 209 *of the Revenue Act of* 1916, *including Section* 315 (*a*) *of the Revenue Act of* 1926.

The history of *Section* 315 (*a*) and *Section* 3186 subsequent to 1926 simply serves to confirm our contention that the latter section is the generating source of the lien mentioned in the former.

When Congress adopted the *Revenue Act of* 1928, it was deemed advisable to make specific provision with respect to the manner in which taxpayers might procure releases of tax liens. *Reports of Ways and Means Committee of the House of Representatives* and of the *Finance Committee of the Senate on the Revenue Act of* 1928. The release provisions which Congress finally adopted as part of *Section* 613 (*a*) *of the Revenue Act of* 1928 were added, not to *Section* 315 (*a*). Instead they were incorporated in *Section* 3186 as part thereof and specifically made applicable to all types of Internal Revenue Taxes. It is odd, indeed, if *Section* 315 (*a*) imposes a lien which is separate and distinct from that prescribed by *Section* 3186, that Congress did not amend both sections by specifically adding similar release provisions to each. The explanation of the manner in which Congress made that amendment indicates quite clearly that it regarded *Section* 3186 as imposing a basic lien for all taxes and that it was continuing its policy of building the Federal Statutory Law relating to liens around that provision as a nucleus. It also indicates that Congress conceived *Section* 315 (*a*) as an adjunct to *Section* 3186 and not as a provision separate, distinct and independent of the latter section.

At the time that Congress adopted the *Revenue Act of* 1934, it again indicated that it regarded *Section* 3186 as the generating source of all Federal Tax Liens. Among the recommendations made by the Secretary of the Treasury with respect to the Revenue Act of 1934 was the following:

"At the present time there are two methods provided by law for releasing liens for estate and gift taxes. The authority provided in section 315 (a) of the Revenue Act of 1926 and in section 510 of the Revenue Act of 1932 is fully adequate. The Treasury recommends the elimination of the second method, which is authorized by section 3186 of the Revised Statutes, as amended by section 613 (a) of the Revenue Act of 1928. This amendment would be accomplished by adding to the end of that section the words 'except the lien imposed by section 315 of the Revenue Act of 1926, and the lien imposed by section 510 of the Revenue Act of 1932'."

The underlying assumption of the recommendation of the Secretary of the Treasury was that *Section* 315 (*a*) was a separate, distinct and self-operating section, not in any way related to *Section* 3186. It is significant that Congress rejected this recommendation for it indicates unequivocal Congressional disapproval of the underlying theory of the recommendation.

Before concluding this subsection of the brief, one further significant point should be noted. Respondent's present position that *Section* 315 (*a*) imposes a lien and one which is separate and distinct from that imposed by *Section* 3186 contrasts strangely with the complete absence of even the slightest intimation in the Regulations promulgated by the Commissioner of Internal Revenue interpretative of *Section* 315 (*a*) (and the predecessors of that section in previous Revenue Acts) that such was or would be the position of Respondent.

C

The construction of *Section* 315 (*a*) *of the Revenue Act of* 1926, *as amended* (*Section* 827 (*a*) *of the Internal Revenue Code*) and of *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) urged by Petitioner will effectuate a well defined Congressional policy of protecting bona fide purchasers and encumbrancers against the evils of secret tax liens.

We alluded above to the fact that as originally enacted *Section* 3186 contained no provisions requiring notice of the lien imposed thereby to be filed or recorded in order to make the same effective against bona fide purchasers and encumbrancers. While the law stood in this posture, *United States v. Snyder,* 149 U. S. 210, and *United States v. Curry,* 201 F. 371 (D. C. Md.) were decided. Broadly speaking, these cases held that since *Section* 3186 contained no provision requiring the filing or recording of notice of the lien imposed thereby to make it effective against bona fide purchasers and encumbrancers no such filing or recording of notice was necessary. The repercussions of those decisions are well stated by the Circuit Court of Appeals for the Third Circuit in *United States v. Beaver Run Coal Company,* 99 F. (2nd) 610 (C.C.A. 3rd). Speaking of the reason for the amendment of *Section* 3186 to require the filing or recording of notice to make the lien imposed thereby effective against bona fide purchasers and encumbrancers, the Court said:

> "On May 1, 1893, the United States Supreme Court, in the case of *United States v. Snyder,* 149 U. S. 210, held that the lien created by the above section was not subject to the recording laws of

> the states, and that it was enforceable even against a subsequent bona fide purchaser for value without notice. This decision cast a cloud of uncertainty upon titles to land throughout the United States and, before long, under the leadership of the American Bar Association, agitation for remedial legislation began. By the Act of March 4, 1913, Congress amended Section 3186 by adding thereto a provision—'that such lien shall not be valid as against any mortgagee, purchaser or judgment creditor until' certain recording and filing requirements, thereafter set forth, had been fulfilled. 37 Stat. 1016."

The amendment in 1913 of *Section* 3186 to require filing or recording of notice of the lien imposed thereby to make it effective against bona fide purchasers and encumbrancers marked the inauguration of a policy of protecting such innocent vendees and mortgagees which Congress has consistently adhered to.

When Congress enacted the *Revenue Act of* 1939, it again reaffirmed its policy of according protection to bona fide purchasers and encumbrancers of property subject to liens for Internal Revenue Taxes by adopting *Section* 401 *of the Revenue Act of* 1939 amendatory of *Section* 3186 which was reenacted as *Sections* 3670 to 3677 *of the Internal Revenue Code. Section* 401 *of the Revenue Act of* 1939 *amends Section* 3672 *of the Internal Revenue Code* to add as subparagraph (b) thereof the following:

> "(b) (1) *Exception in Case of Securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner prescribed in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as

amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser, of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

"(2) *Definition of Security.*—As used in this subsection the term 'security' means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing negotiable instrument; or money.

"(3) *Applicability of Subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose."

The reason for the adoption of *Section* 401 *of the Revenue Act of* 1939 is set forth in the *Report of the Ways and Means Committee on Section* 401 *of the Revenue Act of* 1939 in the following language:

"The chief purpose of section 401 is to amend section 3672 by adding a new subsection (b) dealing with securities. * * *.

> "The new provisions dealing with securities are considered necessary because of a recent decision of a district court (United States v. Rosenfeld, E. D. Mich., 1938, 26 F. Supp. 433). This case held that a bona fide purchaser for value of shares of stock from a seller against whom a notice of lien for Federal income taxes had been duly filed prior to the sale took subject to the lien even though the purchaser did not have notice or knowledge of such lien. While it is true that the filing of the notice of the tax lien may constitute notice in the case of real property, it is inequitable for the statute to provide that it constitutes notice as regards securities. For example, when a broker purchases a security for his customer on the exchange, it is obviously impossible for him to check all the offices in which a notice of the tax lien may be duly filed to determine whether the security is subject to such lien. A like situation exists with respect to over-the-counter and direct transactions in securities. An attempt to enforce such liens on recorded notice would in many cases impair the negotiability of securities and seriously interfere with business transactions. The adoption of the amendment will remove an existing hardship without causing any undue loss of revenue."

See, also, *The Report of The Senate Finance Committee covering Section* 401 *of the Revenue Act of* 1939.

The adoption of *Section* 401 *of the Revenue Act of* 1939 is important, not only because it reaffirms a clearly defined Congressional purpose to protect bona fide purchasers and encumbrancers, but also because it once again indicates that Congress regards *Section* 3186 as the basic lien provision of the Federal Statutory System.

In amending *Section* 3186 to require the filing or recording of notice of the lien imposed thereby to make

the same effective against bona fide purchasers or encumbrancers, Congress intended to deracinate the evils of the doctrine of *United States v. Snyder*, 149 U. S. 210. See *United States v. Beaver Run Coal Company*, 99 F. (2nd) 610 (C.C.A. 3rd), *supra*. Congress enacted *Section* 401 *of the Revenue Act of* 1939, *amendatory of Section* 3186 *of the Revised Statutes of the United States* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) to protect bona fide purchasers and encumbrancers of securities against the lien accorded to Respondent for the collection of Internal Revenue Taxes even though notice of that lien has been filed or recorded as therein provided. See *The Report of the Ways and Mans Committee on Section* 401 *of the Revenue Act of* 1939, *supra*. If the contention advanced by Respondent (and adopted by the District Court and the Circuit Court of Appeals) is sustained and *Section* 315 (*a*) is held to impose a lien separate and distinct from that embodied in *Section* 3186, those clearly enunciated Congressional purposes will be unfulfilled. If the construction urged by Petitioner is adopted, the result sought to be accomplished by Congress is completely achieved. It is hardly reasonable to suppose that Congress left its object but half achieved and singled out the Federal Estate Tax to occupy a preferred position in this regard. To adopt the construction advanced by Respondent would be to thwart a plainly manifested Congressional intent and restore with respect to Estate Taxes (including such taxes on securities) the intolerable situation which existed with respect to all property under the doctrine of *United States v. Snyder*, 149 U. S. 210, *supra*, and with respect to securities prior to the enactment of *Section* 401 *of the Revenue Act of* 1939.

Not only would the decision of the court below if sustained run counter to a well defined Congressional policy, but it would produce absurd and inexplicable results.

Section 315 (*b*) (*Section* 827 (*b*) *of the Internal Revenue Code*, see appendix) would accord to bona fide purchasers and encumbrancers acquiring property from a donee who received the same pursuant to a transfer under which the donor reserved to himself the income for life, complete protection against the lien for Estate Taxes. Yet an innocent vendee or mortgagee from a surviving tenant by the entirety finds his property saddled with a lien. A search for differences justifying such varying treatment is fruitless for no differences exist. The situation of the creator of a tenancy by the entirety and the donor who has reserved the income from transferred property are virtually identical, except that the former has reserved the right to only one-half of the income for life instead of all. *Commissioner v. Hart*, 76 Fed. (2nd), 864 (C.C.A. 6th); *Gessner v. Commissioner*, 32 B.T.A. 1258. The surviving tenant of an estate by the entirety and the donee under a transfer reserving the life income occupy positions which are indistinguishable in terms of substantial rights. Any lack of precise identicalness which may arise from the fact that the surviving tenant must outlive the creator of the tenancy in order to enjoy the fruits of the creator's beneficence is easily eliminated. Assume the retention (which does not in any way affect the operation of *Section* 315 (*b*)) by donor, who has reserved the income for life, of the oft reserved right of reversion in the event of the donee's death prior to that of the donor and the two cases become indistinguishable.

There is nothing in one case which would suggest inquiry into the possibility of unpaid estate taxes which is not equally present in the other. If it be thought that the loss of revenue which might result is sufficient to justify the visitation of the hardship of a secret lien

on a bona fide purchaser from a surviving tenant of an estate by the entirety, it should be remembered that similar considerations should justify a similar depredation with respect to an innocent vendee or mortgagee whose transferor is a donee of property the income from which the donor has reserved to himself. It is unbelievable that Congress should have intended to bring about the arbitrary and capricious result which the interpretation of *Section* 315 (*a*), adopted by the court below, produces.

In the light of the foregoing considerations, the language of the Circuit Court of Appeals for the Third Circuit in *United States v. Beaver Run Coal Co.*, 99 Fed. (2nd) 610, is particularly worthy of note. In that case the court held that the lien of the United States for Federal Income Taxes which had *not* been filed or recorded as provided in *Section* 3186 did not prevail against a purchaser or encumbrancer *even though he possessed actual notice of the claimed lien.* In the course of its opinion the court said:

> "It is a well established doctrine that a clear, unambiguous statute must be literally construed. Hamilton v. Rathbone, 175 U. S. 414, 20 S. Ct. 155, 44 L. Ed. 219; Thompson v. United States, 246 U. S. 547, 38 S. Ct. 349, 62 L. Ed. 876; Crooks v. Harrelson, 282 U. S. 55, 51 S. Ct. 49, 75 L. Ed. 156; Helvering v. New York Trust Co., 292 U. S. 455, 54 S. Ct. 806, 78 L. Ed. 1361. *If an apparently unambiguous statute contains hidden ambiguities, or if a literal construction would clearly defeat the object intended by Congress, or if a literal construction would result in absurdities so gross 'as to shock the general moral sense,' then the courts may be entitled to depart from the strict wording in order to give the statute a reasonable construction. Helvering v. New York Trust Co., supra, Crooks v. Harrelson, supra.*

"In the instant case, however, the literal interpretation of section 3186 does not contain hidden ambiguities, does not defeat the object intended by Congress and does not result in any shocking absurdity. Indeed, any possible absurdity resulting from such an interpretation is far less shocking than the situation existing prior to 1913 when titles to land, which had always been governed by state law, were clouded by the provisions of a federal statute * * *."

(Italics ours)

D

This Court should not follow the erroneous decision of the District Court for the Southern District of California in *United States vs. Security-First National Bank of Los Angeles, et al.*, 30 Fed. Supp. 113, on which the court below relied.

In reaching its decision that the lien herein sought to be foreclosed is entitled to priority over the lien of Petitioner's mortgages, the court below relied almost exclusively on the decision of the California District Court in *United States v. Security-First National Bank of Los Angeles, et al.*, 30 Fed. Supp. 113, appeal dismissed by *Stipulation*, 113 Fed. (2nd) 491 (C.C.A. 9th). That case involved an action by the United States of America to collect its claim for unpaid Estate Taxes through the enforcement of its lien therefor, against a certain parcel of real estate acquired by one of the defendants as the result of the foreclosure of a mortgage made by the estate of a decedent to a bona fide encumbrancer. The decedent had died on February 13, 1926 leaving an estate including the parcel of real estate in question on which a Federal Estate Tax was payable. An Estate Tax return

should have been filed by February 13, 1927. In fact none was filed until February 2, 1933, nearly seven years after the decedent's death. Subsequent to the filing of the return the tax was assessed and appeared for the first time in the April and June 1933 assessment lists. On August 11, 1933, notice of the lien was filed by the collector pursuant to *Section* 3186. The mortgage under which the defendant claimed was made sometime prior to August 11, 1933, but the exact date of the mortgage does not appear. We may safely conclude, however, that the mortgage antedated the filing of the Estate Tax Return by a wide margin. The court held that the lien of the United States for Estate Taxes was entitled to priority over the lien of defendant's mortgage. While that case reaches a conclusion which is in accord with the decision below, the failure of the court to give consideration to the crucial question which both that case and this case present and the bases on which the court rested its decision, counsel this Court to give it little weight as a precedent.

The court in the *Security-First National Bank* case rejected at the outset the contention of defendant's counsel that the lien referred to in *Section* 315 (*a*) did not, as against a bona fide purchaser, attach at the date of the decedent's death. The court, however, conceded that the vital question was not the date on which the lien attached, but whether it was entitled to priority as against a subsequent bona fide purchaser. The defendant in that case then argued that the provisions of *Section* 3186, requiring the recording of notice of the lien imposed thereby (to make it effective against bona fide purchasers and encumbrancers), should be read into *Section* 315 (*a*). The court attempts to answer that argument with the statement that this argument assumes that here can be

but one lien to enforce a tax in favor of the Government. It is doubtful if the argument of the defendant in the *Security-First National Bank* case was so premised. Whether it was or not, however, is immaterial. We concede that Congress has the power to impose a hundred liens for the same tax if it so desires. The real question which this case presents and which the *Security-First National Bank* case presented is not whether Congress has the power to impose two liens for the same tax, but whether it did in fact exercise its undoubted authority in this regard. The court in the *Security-First National Bank* case assumed rather than decided that Congress did assert its prerogative and did impose two separate and distinct liens (one by *Section* 315 (*a*), and one by *Section* 3186). Indeed the crucial question of whether those two sections imposed separate and distinct liens was not even considered by the court for the defendant in that case seems not to have even argued the point. The opinion of the Circuit Court of Appeals in the instant case indicates all too clearly that it give insufficient independent consideration to this pivotal problem and placed implicit reliance on the conclusion of a court which gave it none at all.

The *Security-First National Bank* case quite frankly recognizes the harshness of the result which it reached. The court suggests that its conclusion must be presumed to be in accord with the intent of Congress for that legislative body permitted to remain unchanged for a period of twenty-three years a statute whose defect could have been cured by a simple amendment. This assertion is so completely untenable that it is difficult to conceive how the court could have seriously advanced it. It is true that the statute in question has remained unaltered since

its original enactment, but the failure of Congress to act is hardly a reason for assuming that the result, which the *Security-First National Bank* case reached in 1939, has Congressional approbation. Since the original enactment of *Section* 209 *of the Revenue Act of* 1916 (*the* predecessor of *Section* 315 (*a*)) relatively few decided cases have involved its interpretation, or that of its successors. Prior to *Security-First National Bank* case there was not a single reported decision of a State or Federal Court which even considered the effectiveness of the lien referred to in those sections, against a bona fide purchaser or encumbrancer. Perhaps the great paucity of decisions is accounted for by the fact that it required twenty-three years to toughen Respondent's conscience to the extent necessary for the presentation of the unconscionable argument which it advanced in the *Security-First National Bank* case and again in this case. Whatever may have been the reason, it is clear that Congressional approval cannot be inferred from its failure to alter a statute to avoid the harsh results of a nonexistent interpretation. It is much more reasonable to assume that Congress supposed that *Section* 315 (*a*) would receive the interpretation which Petitioner urges and that its surprise at the decision of the *Security-First National Bank* case was no less complete than that of the Bar.

The final argument of the court in the *Security-First National Bank* case is that its decision may be sustained on grounds of policy. It points out that under the provisions of *Section* 3186 the Collector knows the date of the inception of the lien since the lien takes effect when the assessment list is received and hence the Collector is able to file the required notice immediately upon the accrual of the lien. The same is not true says the court

under the provisions of *Section* 315 (*a*) for the Collector has no way of learning whether an estate tax is due on the date on which the lien accrues without extensive investigation. That argument breaks down completely upon analysis. The Collector knows that under the construction placed on *Section* 315 (*a*) the lien therein referred to has its inception on the death of decedent. The taxes which this lien secures are then owing though not payable until a later date. He does not know the amount of the estate tax, if any, then owing by such decedent, but Congress imposed no requirement that the notice of lien to be valid must specify the amount of the tax. Actually the only fact which the Collector is required to learn to be in full possession of all information necessary to enable him to file notice of the lien is the occurrence of the decedent's death. This information is available to him shortly after the Decedent's death for *Section* 304 (*a*) *of the Revenue Act of* 1926 (*Section* 820 *of the Internal Revenue Code*) enjoins upon an executor the duty of notifying the Collector of the death of the decedent whose estate he is administering. This notice must be filed within two months after the decedent's death or within a like period after the executor's qualification. To conclude that any substantial portion of the decedent's property will have been transferred or mortgaged during the short period of time between death and the giving of this notice is to assume a traffic in the property of decedent's estates which simply does not exist.

Even if it were true that the lien referred to in *Section* 315 (*a*) could not be made effective, without extensive investigation, against the whole world from the moment of its accrual, were the filing of notice required, that is no

reason for assuming that Congress did not intend to require such filing as a condition precedent to effectiveness of that lien against bona fide purchasers and encumbrancers. It has never been the policy of the law to deny protection to an interest merely because such protection would qualify the rights of others. Even the cherished right of free speech has never been held to be absolute on the ground that to recognize any qualification of that right would impair its complete enjoyment.

The fallacy of the final argument of the court in the *Security-First National Bank* case becomes more apparent the more one examines it. The basic assumption of that argument is that Congress by enacting *Section* 315 (*a*) intended to provide Respondent with a lien which can be made effective against the entire world from the date of the accrual of the tax, the collection of which it is designed to enforce. The court points to no actual indicia of such a legislative intent. Indeed, such evidence of Congressional purpose as exists points to a precisely contrary conclusion. The general tax lien statute (*Section* 3186), as applied to income taxes does not accrue from the date of the event, i.e., the receipt of taxable income, which gives rise to the tax. It does not even arise when the tax on that income becomes payable which is approximately seventy-five days after the end of the taxable year during which that taxable income is received. The lien dates from the date on which the assessment list is received by the Collector, which of necessity is subsequent (and, in case of a deficiency, long subsequent) to the time when the tax for which the lien is given, becomes payable. The court in the *Security-First National Bank* case suggests no reason

to support its assumption that a completely different Congressional purpose exists with respect to Estate Taxes. Indeed, it would be impossible to adduce a reason, for the problem and method of collecting estate taxes is precisely the same as that of collecting Income Taxes. Both Income and Estate Taxes become payable at a time subsequent to the date of the occurrence of the event which gives rise to the tax. Income Taxes are payable within approximately seventy-five days after the close of the taxable period during which the receipt of the taxed income occurs. Estate Taxes are payable within fifteen months after the death of the decedent which marks the incidence of the tax. In both cases the taxpayer or his representative is required to file a return of the tax payable and a summary of the facts which form the basis of the computation of the tax. In the case of neither tax will the Collector of Internal Revenue be able to ascertain without extensive investigation whether a tax is payable or its amount, until the taxpayer files the required return. Nor is there less likelihood that funds will be available for the collection of Estate Taxes than for Income Taxes because of the greater probability that the property, out of which Estate Taxes are payable, will be dissipated. Indeed, the reverse is true. Income and accumulated property of a living taxpayer have a much greater tendency to be fluid and to be dissipated than that of a decedent. In addition, the primary fund for the payment of Estate Taxes will be in the hands of a personal representative of a decedent who will be much less likely to squander the fund, not only because he is accountable to a court, but also because he may render himself personally liable for a tax by the dissipation of funds, the use and benefit of which he did

not personally enjoy. In short, if it be assumed that the desideratum is a lien which is best calculated to insure the collectibility of the tax assessed, every reason exists for making the lien for Income Taxes more stringent than that for Estate Taxes. Yet clearly such is not the case for the lien for Income Taxes is hardly such as to insure maximum collectibility. As was pointed out above, the lien does not even arise until long after the tax is payable. It never becomes effective against bona fide purchasers and encumbrancers of securities and it becomes effective against such innocent vendees and lienees of other property only from the time of filing notice. The lien with which Congress has provided Respondent for the collection of Income Taxes is indeed far from a perfect lien. In view of this, it taxes one's credulity beyond all permissible limits to assume that in the case of Estate Taxes, Congress accorded Respondent the perfect lien which dates from the event which gave rise to the tax, and from that moment on, is good against all the world, innocent vendees and mortgagees included. It has never been suggested that the requirement of filing notice of the lien for Income Taxes to make that lien effective against bona fide purchasers and encumbrancers placed the public revenue in jeopardy. Indeed, when *Section* 401 *of the Revenue Act of* 1939 was enacted to provide that the lien imposed by *Section* 3186 should not be effective against bona fide purchasers and encumbrancers of securities, Congress made it clear that it conceived that the benefits accomplished by that enactment far outweighed the evils which might arise from the loss of revenue resulting from that sweeping concession. See *The Report of the Ways and Means Committee on Section* 401 *of the Revenue Act of* 1939 quoted on page 25, *supra*. Any

loss of revenue which might result from according *Section* 315 (*a*), the construction which we urge would be infinitely smaller for that construction would still leave Respondent with a lien for Estate Taxes which has a much wider scope than that for Income Taxes. The adoption of that interpretation would provide Respondent with a lien having its inception at the date of the decedent's death and valid from that date, without the necessity of filing or recording, against the whole world with the exception of persons occupying the status of bona fide purchasers and encumbrancers.

We have felt it necessary to discuss *in extenso* the unsoundness of the bases and the fallaciousness of the hypotheses on which the court in the *Security-First National Bank* case rested its decision because the court below accepted without analysis (as did the District Court in *United States v. Maguire, et al.*, 42 Fed. Supp. 337*) the conclusion reached in that case. The importance of the problem which this case presents and the results which will be produced if the decision of the court below is sustained, merit the fullest consideration of every phase of the arguments here presented, none of which appear to have been urged upon the court in the *Security-First National Bank* case. The brief and almost cryptic opinion of the court below in the instant case indicates all too clearly a failure on its part to analyze completely the questions which this case involves in the light of the *arguments* presented.

(*) In this case the court solely on the authority of *Security-First National Bank* case held that the lien of a judgment based on a claim arising during the decedent's lifetime and rendered subsequent to his death was inferior to the lien of the United State for Estate Taxes not recorded until after the rendition of the judgment.

II. If *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) is construed as imposing a lien which is effective against bona fide purchasers and encumbrancers without the necessity of filing or recordation of notice thereof, that section as so construed violates the Fifth Amendment of the Constitution of the United States.

The Fifth Amendment to the Constitution of the United States lays under interdict action on the part of Respondent which deprives its citizens of their property without due process of law. Primarily and fundamentally that constitutional prohibition is designed to insure the observance by the Government of the United States of the basic principles of fair play in its dealing with its citizens. It marks out a domain where a citizen may seek asylum from the arbitrary and capricious acts of the sovereign which tend to subvert those principles. *Section* 315 (*a*) given the construction adopted by the court below invades that protected zone.

It should be sufficient to bring the section in question within the scope of enactments condemned by the Fifth Amendment that, as interpreted by the Court of Appeals, it accords Respondent a secret lien and sanctions the expropriation of property of an innocent purchaser in satisfaction of taxes owed by another and arising out of a transaction to which the impeccant owner is a complete stranger. A doctrine so replete with unfairness is offensive to the toughest conscience. The vice of the enactment under consideration does not, however, end there. If the construction sanctioned by the decision under review is adopted, we must attribute to Congress an intention of arbitrarily and unreasonably singling out,

as the special object of confiscation, the property of a small segment of a larger class of its citizens all occupying precisely the same legal position.

The value of a decedent's gross estate for Estate Tax purposes includes the value of much property which is not part of his estate for purposes of administration. The property so included has in common the characteristic that death terminates a retained interest which is less than complete ownership. The principal categories into which property of this type falls are the following: (1) Property held by the decedent and another or others as joint tenants or as tenants by the entirety; (2) property subject to a transfer intended to take effect in possession or enjoyment at or after death; (3) property subject to a transfer containing a reserved power to alter or revoke the right of possession or enjoyment; (4) property subject to a transfer containing a reservation or right to income or the right to control the enjoyment thereof during the decedent's lifetime or a period fixed with reference thereto; and (5) property representing the proceeds of insurance payable to a specific beneficiary. *Section* 315 (*a*) provides that the lien therein described shall attach to the decedent's "gross estate" which as is pointed out below the Internal Revenue Code nowhere defines (see pages 49 to 53). *Section* 315 (*b*). extends that lien to all of the property falling into the various categories mentioned above with one exception. That exception embraces property held by a decedent and another as joint tenants or as tenants by the entirety. At another point in this brief (pages 49 to 53) that omission is urged upon this court as indicating that Congress did not intend that the lien for Federal Estate Taxes should extend to jointly held and entireties property. That la-

cuna in *Section* 315 (*b*) has an additional and deeper significance, for if the construction of that section approved by the court below is to prevail, both that section and *Section* 315 (*a*) offend the Fifth Amendment.

Section 315 (*b*) extends the lien described *Section* 315 (*a*) to the property which the former enumerates but limits the operation of that lien with respect to transferees of such property by specifically providing in the following language—

> "* * * Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth."

that the lien shall not be valid as against bona fide purchasers from such transferees. This provision brings into sharp focus the arbitrary and capricious character of the unequal treatment which *Section* 315 (*a*), as construed by the court below, accords to an innocent purchaser from a surviving tenant of an estate by the entirety. If A transfers property to B reserving to himself the income for life and B after A's death sells the property to C, an innocent purchaser, C takes the property free of the lien to which it was subject in B's hands. If, however, A and B had been joint tenants or tenants by the entirety and B, after A's death, sells the property to C, the latter's good faith is no protection to him. He finds that property which he innocently acquired can be wrested from him to pay A's taxes arising

out of a transaction to which he, C, is a complete stranger. This court has frequently called attention to the fact that the Fifth Amendment unlike the Fourteenth contains no provision prohibiting the denial of equal protection of the laws. *LaBelle Iron Works v. United States,* 256 U. S. 377; *Brushaber v. Union Pacific R. R. Co.,* 240 U. S. 1; *Steward Machine Co. v. Davis,* 301 U. S. 548; *Currin v. Wallace,* 306 U. S. 1; *Sunshine Anthracite Coal Co. v. Adkins,* 310 U. S. 381. It has never denied, however, that discrimination may be so great and unequal treatment so unjustifiable as to constitute arbitrary and capricious action amounting to confiscation which this Court has recognized as offensive to the Fifth Amendment. *Nichols v. Coolidge,* 274 U. S. 531. See also *Brushaber v. Union Pacific R. R. Co.,* 240 U. S. 1; *Barclay & Co. v. Edwards,* 267 U. S. 442. This Court will search in vain, as have we, for any reason founded on logic or policy which even faintly suggests a ground for denying to a bona fide purchaser from a surviving tenant by the entirety the protection which is so freely accorded to the innocent purchasers from a donee who takes by a transfer of the type described in *Section* 315 (*b*). As interpreted by the court below, the enactment under consideration becomes the very avatar of legislative caprice, offensive to even the most elastic conscience.

This Court, through the late Justice Holmes, has chronicled its doubt as to whether transferees of the type mentioned in *Section* 315 (*b*) can constitutionally be made liable for the tax imposed on the estate of a decedent who is the source of the transferee's title. *Llewellyn v. Frick,* 268 U. S. 238, 251. That uncertainty is magnified where the person sought to be made liable for that tax is an innocent stranger who purchased in good faith from such a transferee and who has no connection with the

transaction giving rise to the tax. Perhaps it was this increased distrust as to constitutionality which was the generating source of the protection which Congress provided for bona fide purchasers from the transferees enumerated in *Section* 315 (*b*) by enacting the portion thereof quoted above. Whatever may have been the basis for the inclusion of this protective clause, it would be unthinkable to suppose Congress intended further to add to this welter of constitutional dubiety by according to one portion of a class of innocent purchasers different treatment from that given a class of such transferees, all similarly situated, whose liability for estate tax this Court has already branded as constitutionally uncertain. It is, however, unnecessary to strike down *Sections* 315 (*a*) and 315 (*b*) as violative of the Fifth Amendment. We submit that Congress intended no such arbitrary and discriminatory action as the decision of the court below attributed to the National Legislative Body by its construction of the enactment under consideration. This Court has construed and should construe the Acts of Congress to avoid, if possible, any doubt as to their constitutionality. *Panama R. R. Co. v. Johnson*, 264 U. S. 375; *Lewellyn v. Frick*, 268 U. S. 238; *Hassett v. Welch*, 303 U. S. 303. The construction of *Sections* 315 (*a*) and 315 (b) which Petitioner urges avoids possible collision between those sections and the Fundamental Law. By interpreting *Section* 315 (*a*) as imposing no lien but as merely describing certain attributes of the lien imposed by *Section* 3186, which requires notice of that lien to be filed to make the same effective against bona fide purchasers, the necessity is obviated of imputing to Congress an intent to arm Respondent with that invidious instrument—a secret lien. In addition, it places on a parity innocent purchasers from a surviving tenant of an estate by the entirety and from the transferees described in *Section*

315 (*b*). The protection of all such bona fide purchasers then rests on the requirement of filing or recording and not on the entirely fortuitous circumstance that the vendor or mortgagor acquired his title by virtue of a transfer intended to take effect in possession or enjoyment at or after death rather than as the survivor of an estate by the entirety.

We are not unmindful of the fact that the second sentence of *Section* 315 (*b*) frees from the lien for estate taxes only property "sold to a bona fide purchaser." It might conceivably be contended that Petitioner is not in a position to object to the inequality (which *Sections* 315 (*a*), as construed by the court below and 315 (*b*) create) because such inequality exists only with respect to purchasers from transferees described in the latter section, and encumbrancers not being included in the latter section are all accorded equal treatment—namely a complete lack of protection. The answer to this question is twofold. In the first place, it is difficult to believe that the word "sold" is to be construed in the narrow sense of an outright transfer of title. Cf. *United States v. Rosebush*, 45 Fed. Supp. 664 (D. C. Wis.). While this question appears never to have been passed upon by the courts, it is fair to assume that Congress intended, in view of its consistent policy of protecting both purchasers and encumbrancers (see pages 23 to 31 of this brief) that the words "sold to a bona fide purchaser" should include a mortgage to a bona fide encumbrancer. Indeed, a mortgage may be brought within the precise wording of the statute for as a matter of legal theory a mortgage has been sometimes regarded as a sale upon a condition subsequent. However, it is not necessary to

resort to such formalism for the courts have indicated that substantially similar language, namely, "a bona fide sale for an adequate and full consideration in moneys worth" used in several places in *Section* 811 *of the Internal Revenue Code* embraces transactions which are not sales in the narrow sense of that term. See *Root, et al., Executors v. United States,* 56 F. (2nd) 857 (D. C. Fla); *Estate of Warner D. Hunt v. Commissioner,* 19 B.T.A. 624 (Acq.) *Goldman, et al., Executors v. Commissioner,* 11 B. T. A. 92 (Acq.). In the second place, Petitioner is a purchaser of the property which is the subject-matter of this suit. Its initial connection with that property was as mortgagee but those mortgages were foreclosed and at the foreclosure sale Petitioner became the purchaser. The fact that the sale was upon the foreclosure of Petitioner's mortgages is immaterial, so far as the present controversy is concerned. This Court has itself said that for purposes of Federal Taxation such a sale is to be treated as any other sale. *Helvering v. Hammel,* 311 U. S. 504.

The constitutionality of *Section* 315 (*a*) has never been adequately explored. The question was not raised in either *United States v. Security-First National Bank of Los Angeles, et al.,* 30 Fed. Supp. 113, *appeal dismissed* 113 Fed. (2nd) 491 (C.C.A. 9th), or *United States v. McGuire, et al.,* 42 Fed. Supp. 337. Indeed, the same constitutional question, as is presented in this case, could have been raised in neither. In the former case the mortgagor was the estate, not as in the instant case, a transferee of the same general class as those described in *Section* 315 (*b*). The same is true of the latter case for there the encumbrancer was an unsecured creditor of

the decedent at the time of his death whose lien arose by virtue of the reduction of that claim to judgment subsequent to death but prior to the filing by the Government of notice of its lien. In *United States v. Snyder*, 149 U. S. 210 no question of constitutionality was presented. That case dealt solely with the question of the relative priority of the lien imposed by *Section* 3186 (prior to its amendment to require filing or recording of notice to make it effective against bona fide purchasers) and that of a mortgage acquired in good faith and for value. This Court stated that the single question presented for its consideration was "whether the tax system of the United States is subject to the recording laws of the states" and that was all that this Court decided.

The District Court, on the constitutional issue, assumed rather than decided that *Section* 315 (*a*) given the construction which it accorded to that section, did not violate the Fifth Amendment (R. 240-243). The Circuit Court of Appeals expressly decided in favor of constitutionality but its decision is marked by almost a complete absence of any discussion of the point (R. 295). It apparently was of the opinion that the provisions of *Section* 313 *of the Revenue Act of* 1926 (*Sections* 825 (*a*) *and* 827 (*c*) *of the Internal Revenue Code*) were sufficient answer to the argument of unconstitutionality. The provisions relied upon by the Court of Appeals are substantially to the following effect: The executor may apply for a prompt determination of the amount of Estate Tax payable by the estate in his charge. Within one year from the date of such application (or if the application is made before the return is filed, then within one year from the date on which the return is filed), the Commissioner is required to determine the amount of tax. Upon the payment by

the executor of the amount of the tax so determined, the executor is released from personal liability. This payment, however, does not release any part of the gross estate from the lien for any deficiency in tax subsequently determined, except where title to such part of the gross estate has passed to a bona fide purchaser. The court below seems to have reasoned that since these provisions afforded Petitioner a procedure for protecting itself against the lien of the Government, it may not complain, not having resorted to this procedure, that its property is appropriated in satisfaction of that lien. The difficulty with this argument is that its premise is false for Petitioner could not have availed itself of these provisions even if it had desired to do so. The application for a prompt determination of the tax under *Section 313 of the Revenue Act of* 1926 must be made by the *executor* and by him alone. Petitioner could not, therefore, have made the application. The same was true of its mortgagor, who was not the executor of Mr. Paul's estate, but the surviving tenant of an estate in specific property which she and John P. Paul held as tenants by the entirety. It is, therefore difficult to conceive how either Petitioner or its mortgagor would have been able to avail themselves of the suggested panacea. Conceivably a surviving joint tenant or the survivor of a tenancy of the entireties might be able to prevail on an executor to make application for the determination. There is nothing certain about this procedure, however, for there is no way in which the executor can be compelled to make the required application. It is not difficult to conceive of a case where a hostile or indifferent executor would ignore such a request on the part of a surviving tenant. It is likewise not difficult to envisage a situation where a decedent would have no estate subject to administration

and hence no executor could be appointed. Under such circumstances a surviving tenant would be helpless. A protection dependent on so many contingencies is illusory and an illusory protection is hardly an adequate substitute for the aegis which *Section* 315 (*b*) affords to innocent purchasers from other transferees of a decedent.

Quite apart from what has been said in the preceding paragraph, it is extremely doubtful whether an application under *Section* 313 *of the Revenue Act of* 1926 would have accorded effective protection to Petitioner. That section discharges the executor from personal liability. However, the complementary provisions of that section do not operate to release any part of the gross estate from the lien unless (1) "the title to such part of the gross estate has passed" and (2) "to a bona fide purchaser for value." Respondent concedes, and there can be no doubt, that Petitioner as a mortgagee without notice is a bona fide purchaser. However, under the laws of the State of Michigan it is well settled that no title passes to a mortgagee. See *Ladue v. The Detroit & Milwaukee R. R. Co.*, 13 Mich. 280, 394; *Dawson v. Peter*, 119 Mich. 274, 280, 77 N. W. 997; *Equitable Trust Co. v. Milton Realty Co.*, 263 Mich. 673, 676, 249 N. W. 30. This argument cannot be lightly dismissed on the ground that the statutory language may be broadly construed. Congress in enacting *Section* 313 did not phrase this release provision in the elastic language of sale or transfer. Instead it expressly made the divestiture of the lien dependent on whether "title has passed." Respondent may protest that it would never have taken such a position. The present case, however, is proof that Respondent neglects no contention, however inequitable, in seeking to enforce its lien for taxes.

III. The lien herein sought to be foreclosed does not in any event extend to any of the property herein involved in which John P. Paul at the time of his death possessed an interest as a tenant by the entirety.

Even though this Court should sustain the conclusion that Respondent's lien for Estate Taxes is valid against bona fide purchasers and encumbrancers still that lien would be enforceable only against such of the property as was not held by John P. Paul and his wife as tenants by the entirety at the time of the former's death.

Property passing to a surviving tenant of an estate by the entirety is not part of "the gross estate" of a decedent as that term is used in *Section* 315 (*a*). The statutes of the United States nowhere define the term "gross estate." *Section* 302 *of the Revenue Act of* 1926, *as amended* (*Section* 811 *of the Internal Revenue Code*) dealing with the concept of a decedent's gross estate does not attempt to define that concept. It simply provides that "the *value* of the gross estate of the decedent shall be determined by including the *value* at the time of" the decedent's death "of all property, real or personal, tangible or intangible, wheresoever situated, except real property situated outside of the United States, to the extent of the interest therein of the decedent at the time of his death." That section then proceeds to enumerate other property which does not form a part of a decedent's estate for purposes of administration, the value of which is included in determining the gross amount upon which a tax is payable. Property of this latter class embraces property in which a decedent at the time of his death had an interest as a tenant in the estate by the entirety. Except for specific provision (of

Section 302 *of the Revenue Act of* 1926, *as amended,* (and its predecessors) requiring the inclusion (in computing the value of a decedent's gross estate) of the value of the property therein described which is not subject to administration, the value of such property would not be includable even under the broad language of *Section* 302 (*a*) *of the Revenue Act of* 1926 (*Section* 811 (*a*) *of the Internal Revenue Code*). See *Helvering v. Safe Deposit & Trust Co.*,..... *U.S.*..... 62 *S. Ct.* 925 (*decided April* 13, 1942); *Porter v. Commissioner,* 288 U. S. 436; *Davis v. United States,* 27 *Fed. Supp.* 698; *Estate of Gertrude L. Royce v. Commissioner,* 46 *B.T.A. No.* 147. The words "gross estate" have no inherent significance broad enough to include the interest of a decedent in property held by him and his surviving spouse as tenants by the entirety or in any property not subject to administration. The word "estate" clearly connotes only property subject to administration and the word "gross" simply serves to indicate that the estate without deduction for claims which have not become a lien against specific property at the date of a decedent's death is intended. The words "gross estate" as used in *Section* 315 (*a*) must have been intended only to embrace property which is taxable under *Section* 302 (*a*) *of the Revenue Act of* 1926. Congress was fully cognizant of that inherent limitation of those words for had they been broad enough to encompass taxable property which is not subject to administration, *Section* 315 (*b*) would have been wasted legislative effort. This is made abundantly clear by the fact that as Congress amended *Section* 302 *of the Revenue Act of* 1926 (and its predecessors) to provide for the inclusion of the value of different types of property, not subject to administration, in the value of a decedent's gross estate, it amended *Section* 315 (*b*) (and its

predecessors) to extend the lien to such newly added property. See *Section* 402 (*f*) *of the Revenue Act of* 1918, taxing the value of the proceeds of insurance in excess of $40,000 payable to a specific beneficiary and *Section* 409 *of the Revenue Act of* 1918 extending the lien for the tax to such proceeds and *Section* 803 (*a*) *of the Revenue Act of* 1932 amending *Section* 302 (*a*) to tax transfers under which the grantor reserved the income for life and *Section* 803 (*b*) *of the Revenue Act of* 1932 amending *Section* 315 (*b*) to extend the lien to such enwly included property. This legislative history is significant in determining the property to which the lien for the tax extends. *John Hancock Mutual Life Insurance Co. v. Helvering,* 128 Fed. (2nd) 745 (App. D.C.).

The lien referred to in *Section* 315 (*a*) extends to the decedent's "gross estate." Yet Congress deemed it essential to provide specifically and in clear and unmistakable terms that such lien should extend to four different types of property, the value of which is included in the value of decedent's gross estate but is not subject to administration. (See pages 40 to 43 of this brief). The attributes of entireties and jointly held property are precisely the same as those of property described in *Section* 315 (*b*). The only ground on which can be predicated the failure of Congress specifically to describe jointly held property and property held in an estate by the entirety in *Section* 315 (*b*) is that Congress did not intend the lien referred to in *Section* 315 (*a*) to attach to such property. That the exclusion of entireties property from *Section* 315 (*b*) is not accidental is attested by the fact that that section does not extend to other taxable property not subject to administration, e. g. dower and curtesy interests and property passing under a general power of appointment. However, whether this omission was inten-

tional or unintentional, we need not inquire. The important thing is that Congress did not subject property of this type to a lien, and because of that failure, no lien attaches to such property. It is well settled doctrine that the legislative intent to subject property to a lien for taxes must clearly appear and that such a lien will neither be created by implication nor enlarged by construction. *Andrew v. Munn,* 205 Iowa 723, 218 N. W. 526; *Little River Drainage District v. Houck,* 206 Mo. App. 283, 226 S. W. 72; *Archibald v. Maurath,* 92 N. J. Eq. 357, 113 A. 6.

The Circuit Court disposed summarily of the argument under this head with the citation of *Goodenough v. Commissioner,* 83 F. (2nd) 389 (C. C. A. 6th); *Robinson v. Commissioner,* 63 F. (2nd) 652 (C. C. A. 6th). Neither of these cases deal remotely with the problem here under consideration. They deal solely with the question of whether the value of entirety property is included in the value of decedent's gross estate. The question of whether such property is subject to a lien for estate taxes was neither presented nor decided in either case.

CONCLUSION

To sustain the decision of the court below is to perpetuate a doctrine which bristles with inequity. For Petitioner it means a loss to the extent of the tax, plus interest, payable by another, in a transaction to which it was a stranger. If Petitioner pays the tax to protect the mortgaged property which it acquired upon foreclosure, it will be poorer to the extent of its payment—an additional payment for which it never bargained. If it is unable to pay the tax, it may lose its entire investment which is many times the amount of the tax. What

is more significant, however, is that for estates generally it will mean an absolute inability to secure loans at a time when mortgage money is a vital necessity—to pay debts, taxes and other expenses incident to administration. No lender will be willing to assume for ten years the risk that his property may be confiscated to satisfy the secret lien of the taxing sovereign which may be asserted long after all liability for estate tax has apparently been finally settled. The instant case eloquently attests the fact that such a risk is a real threat during every moment of the ten-year period for here the lien was asserted just one day short of the tenth anniversary of John P. Paul's death. For Respondent it will be a Pyrrhic Victory. It will have collected the tax in the instant case but for this small gain it will sacrifice liquidity in countless estates yet to be taxed.

If Respondent prevails it will mean that every lender who advanced money on, or purchased, property which formed a part of the estate of a decedent who died within the last ten years will be faced with having his security or his purchase wrested from him to satisfy estate taxes as yet unassessed, payable by the estate of an individual with whom he has had no contact whatsoever. No amount of good faith will protect him. Nor can he console himself if the property on which he has a lien or which he purchased consists of negotiable securities. If the doctrine of the Court below is sustained real and personal property, negotiable securities and even money are equally vulnerable.

The instant case involves an incumbrancer whose mortgagor is a surviving tenant of an estate by the entirety. The next may involve the mortgagee or purchaser of property which has passed through the hands of numerous bona fide purchasers. Under the doctrine of

the court below the lien of such mortgagee or the title of such purchaser must yield precedence to Respondent's lien. This is true even though, as in the instant case, the full amount of the tax has apparently been paid and the additional tax is not asserted until a succession of bona fide purchasers have bought and sold on the basis of a perfect record title. All this means nothing for Respondent may wait, as it did in the case at bar, until the hands of the clock are poised to strike the hour which marks the end of the decade of the lien's existence with complete assurance of being able to wrest the property, whether it be real estate or negotiable securities, from its innocent and bewildered possessor. If the decision of the court below is sustained, Respondent's lien indeed becomes the sword of Damocles but without even the saving grace of the restraining hair.

No amount of investigation can dispel the cloud of uncertainty in which the Court of Appeals' decision wraps all titles. In the case of securities, such as stocks and bonds, it would be virtually impossible even to ascertain whether title was traceable to the estate of a decedent who died within ten years of their acquisition. The evils implicit in such a doctrine were recognized by Congress and it aimed its shaft at those vices when it enacted *Section* 401 *of the Revenue Act of* 1939. (See pages 24 and 27 of this brief). The decision by the court below atrophys that effort and again clogs the channels of trade.

Where the lien for estate taxes involves real property, the abstract of title, on the basis of which title opinions are given and on the basis of which transactions running annually into the billions are consummated, is next to useless. The abstract would disclose that the estate of a

decedent was the source of title and nothing more. It would not disclose the extent of the decedent's taxable estate, whether a return was filed, whether a tax was paid, or any of the essential facts. Even if a purchaser were to examine the inventory of the decedent's estate and that inventory disclosed a taxable estate having a value less than the specific exemption, he could still not safely purchase the property or lend on it as security. Such an inventory would not disclose jointly held or entireties property, gifts in contemplation of death, gifts intended to take effect in possession or in enjoyment at or after death, *inter vivos* transfers subject to a reserved power to alter the right of possession or enjoyment, property passing under a general power of appointment, interests of dower and curtesy or insurance payable to specific beneficiaries. The investigation necessary to determine the existence of such property with sufficient certainty to satisfy a careful title examiner would require a long and arduous search. Even after such a search the giving of a title opinion would be fraught with considerable hazard since one could never be quite certain that all of the necessary facts had been ascertained.

There is an utter lack of realism in the suggestion of the court below that *Section* 313 (*a*) *of the Internal Revenue Act of* 1926, *Section* 825 (*a*) *of the Internal Revenue Code* (which provides a limited protection for bona fide purchasers and incumbrancers who become such after assessment is made as a result of a request pursuant to that section), provides a solution to the dilemma with which that court's decision confronts borrowers and lenders and sellers and purchasers. If a request for an assessment pursuant to the section is made, the Commission-

er is required to make an assessment within one year from the receipt of the request, *if a return has been filed.* If the request is made before the return is filed, the Commissioner is required to make the assessment within one year from the time the return is filed. The Estate Tax Return must be filed and the tax paid within fifteen months after the date of the decedent's death. The mounting Estate Tax rates of the past several years and the future increases in prospect due to the exigencies of the present World War make it a virtual certainty that few estates will escape the necessity of borrowing on the security of or selling a portion of the property comprising the estate to pay whatever taxes may be due. If the decision of the court below is correct, a prospective purchaser or lender cannot safely consummate his purchase or loan until an assessment pursuant to *Section* 313 has been made. This means that in order to be sure of having funds with which to pay the tax on the due date, a return must be prepared and filed and an application for an assessment pursuant to *Section* 313 must be made not later than three months after the decedent's death. In any case where the estate is sizable, this is a formidable task. In many cases it would be virtually impossible.

However, the difficulty does not end here. *Section* 811 (*j*) *of the Internal Revenue Code* permits the executor of a decedent's estate to value the gross estate for Estate Tax purposes as of a date one year after the decedent's death instead as of the date of death. The right to select the optional value is extremely important and unless this right may be exercised the tax in many cases would be more than the value of the estate. This right can be exercised only by an election made by

the executor in the Estate Tax Return. If the executor is required to borrow on the security of or sell property comprising the estate to pay the tax, he must forego the right of optional valuation in order to pay the tax on time. This is true because to be sure that an assessment will be made under *Section* 313 in time to permit him to consummate a loan or sale in time to pay the tax fifteen months after the decedent's death, he is required to file both a return and a request for an assessment pursuant to that section not less than three months after the decedent's death. If the executor wishes to avail himself of the right of optional valuation, it is a manifest impossibility to file a return until one year after death. In this event, even though a request for an assessment pursuant to *Section* 313 has been previously made, the Commissioner has one year from the date of the filing of the return within which to make the assessment. The executor, if he is forced to rely on the provisions of *Section* 313 is thus in this position: If he would be sure of paying the tax on the due date, he must forego the right of selecting the optional valuation date and perform the difficult, if not virtually impossible, task of preparing a return within three months after the decedent's death. On the other hand, if he wishes to avail himself of the privilege of optional valuation, he is in the unpleasant position of having to default in the payment of the tax. It is, of course, true that the executor may be able to prevail upon the Commissioner of Internal Revenue to grant him an extension of time within which to pay the tax. See *Section* 822(*a*)(2) *of the Internal Revenue Code.* If the executor is successful, he is then faced with the prospect of having to furnish security for the payment of the unpaid tax, and in addition is required to pay interest thereon at the rate of four per cent (4%) per annum.

Sections 822(*a*)(2) *and* 890(*a*) *of the Internal Revenue Code.* Thus, even though the executor may think it advisable to sell rather than to borrow, he is forced in effect to borrow and at interest rates and on terms which may be considerably more onerous than could have been obtained from a private lender.

Even if an executor is willing to forego the right of optional valuation and is able to file an Estate Tax Return and a request for an assessment pursuant to *Section* 313 promptly after the decedent's death, he is still beset with problems. Loans and sales can be made only on the basis of conditions which exist at a given time. Yet a prospective purchaser or lender must insist for his protection, if the decision of the court below is correct, on compliance with *Section* 313. In an estate of any size, the investigation which the Commissioner would be required to make, might and probably would consume the greater part of the allotted year. Few prospective purchasers or lenders in a constantly changing world would be willing to keep their commitments open until the Commissioner had acted. Consider, for example, the difficulty (if not the impossibility) of trying to market a block of corporate stock, the market price of which may change hourly. By the time the Commissioner has accomplished his investigation an advantageous sale may no longer be possible. Indeed, the stock which might have been sold for more than enough to pay the entire tax may have become completely unmarketable.

Respondent does not need the all embracing protection which the decision of the court below accords it. It is absurd to suggest that but for this protection dishonest taxpayers could forestall collection by fraudulent sales and mortgages. Such purchasers and encumbrancers

would not be entitled to protection either because of their guilty knowledge or because they parted with no value. Fraud is hardly so rampant as to justify the infliction of such incalculable hardship on the many innocent vendees and lienees who will be affected. Respondent will sustain no injury if the doctrine of the court below is rejected for the proceeds of the mortgage or sale presumably become immediately subject to the lien. In fact Respondent's position may be improved since the proceeds will be liquid while the property sold or mortgaged (such as land) may not.

The logical implications of the decision of the court below produce results which verge on the fantastic. If that decision is correct the property on which Petitioner took a mortgage and of which it later became Purchaser at the foreclosure sale, is subject to respondent's lien. What, however, of the proceeds which Petitioner's mortgagor received as a result of the mortgage? There is no provision of law which expressly subjects those proceeds to the lien as there is in the case of other types of property, the value of which is included in the value of the decedent's gross estate for estate tax purposes, but which is not part of his estate for purposes of administration. *See Section* 827 (*b*) *of the Internal Revenue Code.* If this is correct, then the Petitioner's position is worse than that of its mortgagor, for the property on which it took a mortgage is subject to the lien, but the proceeds of that mortgage are not. Should these proceeds be invested in property which is later sold to a bona fide purchaser it would follow that since the proceeds of the mortgage are not subject to the lien the property in which they are invested is also free of lien. Thus, because Petitioner happened to be the first bona

fide purchaser, instead of the second, it finds itself without protection. Here is arbitrary and capricious treatment incarnate. If it be assumed, on the other hand, that the proceeds of the mortgage which Petitioner made became subject to a like lien which petitioner finds asserted against the property which it acquired in good faith, it should follow that any property into which those proceeds are subsequently converted is also subject to the lien. On this theory Respondent's position improves with each successive purchase and sale by the original holder of the property liable for the tax, for each adds to the pool of property against which Respondent can enforce its lien. Assume that instead of having taken a mortgage on property which belonged to a surviving tenant of an estate by the entirety, Petitioner had loaned its money on the security of property which its lienor had acquired by a transfer intended to take effect in possession or enjoyment at or after death. Petitioner would then have been protected under the provisions of *Section 827 (b) of the Internal Revenue Code* but the proceeds of the loan are subject to the lien. If those proceeds are invested in property, does that property become subject to the lien which attached to the proceeds used in its acquisition? Presumably it does, and thus in this instance the second bona fide purchaser is subject to the same misfortune which would have befallen the first had his transferor acquired the property from a surviving tenant of an estate by the entirety.

Only a few of the astounding results which flow from the decision of the court below are catalogued in the preceding paragraph. Others are not difficult to conceive. How, for example, does the lien, under the doctrine of the court below, affect a bona fide purchaser of property which a decedent did not own at the time of his death,

but which subsequently comes into the hands of the executor as a result of a purchase, partly with the proceeds of the sale of property which the decedent owned at the time of his death, partly with income derived from property purchased with cash which the decedent owned at the time of his death, and partly with money derived from a contingent remainder which the decedent owned at the time of his death, but which did not ripen into possession until subsequent to his demise. He who can solve the riddles which the decision of the court below poses, must indeed be capable of a ratiocination of the irrational.

A good government is one which not only insures fair dealing between man and man but which also observes the principles of fair play in its dealings with its citizens. The three branches of the Government of the United States have scrupulously adhered to these precepts in all fields of activity but nowhere more meticulously than in the field of taxation. That being so, is it fair to assume that Congress deviated from this policy by prescribing, as the procedure for the collection of Estate Taxes, a secret lien calculated to trap the unwary? The question admits of but one answer—the assumption is unthinkable. The rejection of that assumption means the reversal of the decision of the court below. The construction of *Section* 315 (*a*) urged by Petitioner is based upon the fundamental principle that Congress intended to incorporate in the system which it enacted for the collection of Estate Taxes, the principles of fairness on which all action of a Democratic Government should proceed. Every compelling reason of policy, fairness and justice counsel this Court not to allow *Section* 315 (*a*) to continue, as it is under the decision of the court below, "an unfocused threat" to the property of countless innocent persons throughout the United States.

We respectfully submit that this Court should reverse the decision of the Circuit Court of Appeals and should direct the entry of a decree providing that the lien of the Respondent is subordinate and inferior to the title of Petitioner with respect to all of the property herein involved.

Respectfully submitted,

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APPENDIX

Section 3186 *of the Revised Statutes of the United States* (*Act of July* 13, 1866, *c.* 184, *Sec.* 9, 14 *Stat.* 107 *as revised and amended by an Act of March* 1, 1879, *c.* 125, *Sec.* 3, 20 *Stat.* 331) *as amended by Act* 451, *March* 4, 1913 (*c.* 166, 37 *Stat.* 1016) *by an Act of February* 26, 1925, *c.* 344, 43 *Stat.* 994, *by Section* 613 *of the Revenue Act of* 1928, *by Section* 509 *of the Revenue Act of* 1934 *and Section* 401 *of the Revenue Act of* 1939, *now known as Sections* 3670 *to* 3677 *of the Internal Revenue Code,* as amended, reads as follows:

"§3670. Property subject to lien

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

"§3671. Period of lien

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

"§3672. Validity Against Mortgagees, Pledgees, Purchasers, and Judgment Creditors

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee,

pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) (1) *Exception in Case of Securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner provided in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase, such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

"(2) *Definition of Security.*—As used in this subsection the term 'security' means any bond, debenture, note, or certificate, or other evidence of

indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(3) *Applicability of Subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose."

"§3673. Release of lien

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) *Liability Satisfied or Unenforceable.* The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) *Bond Accepted.* There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations."

"§3674. Partial Discharge of Property

(a) *Property Double the Amount of the Liability.* Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) *Part Payment.* Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States."

"§3675. Effects of certificates of release or Partial Discharge

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished."

"§3676. Single Bond Covering Release of Lien and Payment of Income Tax Deficiency

The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of a single bond complying both with the re-

quirements of Section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of subsection (b) of section 3673."

"§3677. Extended Application for Provisions Relating to Release or Partial Discharge

Sections 3673, 3674, 3675, and 3676 shall apply to a lien in respect of any internal revenue tax, whether or not the lien is imposed by this subchapter."

Section 315 *of the Revenue Act of* 1926, *as amended by Section* 613 (*b*) *of the Revenue Act of* 1928 *and by Sections* 803 *and* 809 *of the Revenue Act of* 1932, *now known as Section* 827 *of the Internal Revenue Code* reads as follows:

"§827. Lien for Tax

(a) *Upon gross estate.* Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) *Upon Property of Transferee.* If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession and enjoyment of, or the right to the income from, the property, or (B) the right either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the

tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(c) *Continuance after Discharge of Executor.* The provisions of section 825 shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees."

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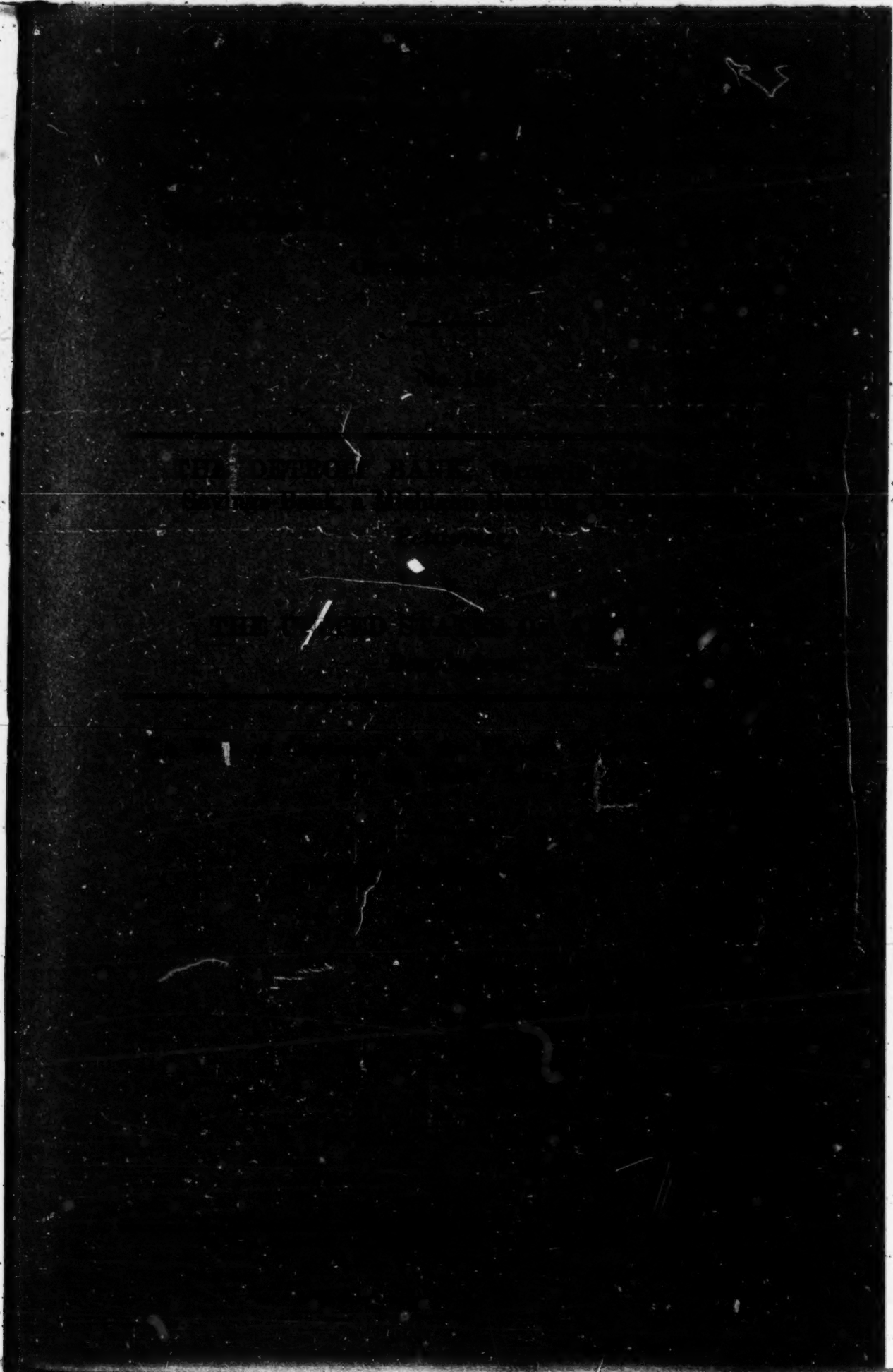

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 156

THE DETROIT BANK, formerly The Detroit Savings Bank, a Michigan Banking Corporation,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the Circuit Court of Appeals for the Sixth Circuit

PETITIONER'S BRIEF

Official Reports of Opinions Rendered in the Courts Below

The opinion of the District Court (R. 229-243) is reported in 41 *Fed. Supp.* 41.

The opinion of the Circuit Court of Appeals (R. 292-296) is reported in 127 *Fed.* (2*nd*) 64.

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF SUPREME COURT IS INVOKED

This is a civil suit in equity arising under the laws of the United States providing for internal revenue and the

collection thereof (R. 100). The Respondent, The United States of America, instituted this action, as plaintiff, to foreclose its lien for Federal Estate Taxes against fifty parcels of real estate located in the City of Detroit, Michigan, all of which were at one time owned by John P. Paul and Lena Paul, his wife, as tenants by the entirety, to collect a deficiency in Federal Estate Taxes in the amount of $23,271.84 and interest thereon assessed against the estate of John P. Paul. The defendants are, encumbrancers (some of whom, including Petitioner, have foreclosed their liens and have become owners of the encumbered property as a result of their purchase at the foreclosure sale) of property which formerly belonged to John P. Paul and his wife, as tenants by the entirety, the State of Michigan and its political subdivisions, the County of Wayne and the City of Detroit, having liens against the property in question for unpaid real estate taxes and the descendents of John P. Paul and his wife (R. 229). The case was tried by the District Court upon a stipulation of facts supplemented by some testimony. The decree in the District Court in general granted the relief prayed for in the Bill of Complaint, except with respect to those parcels of real estate which were encumbered prior to the death of John P. Paul (R. 247-256). Petitioner and eight of the other defendants, including the State of Michigan and its political subdivisions, the County of Wayne and the City of Detroit, appealed from that decree to the United States Circuit Court of Appeals for the Sixth Circuit which affirmed the decree of the District Court (R. 289-291).

The statutory provision under which the jurisdiction of this Court is invoked is *Section* 240(*a*) *of the Judicial Code, as amended by the Act of February* 13, 1925, 43 *Stat.* 938, 28 *USC* 347(*a*). The judgment of the Circuit

Court of Appeals for the Sixth Circuit was entered on April 8, 1942 (R. 290), this case having been docketed in said Circuit Court of Appeals as No. 8988. A petition for certiorari directed to the Circuit Court of Appeals for the Sixth Circuit was filed with this Court on June 17, 1942, and said petition was granted on October 12, 1942. This case is on certiorari from the Circuit Court of Appeals for the Sixth Circuit. Since *Section* 240(*a*) *of the Judicial Code, as amended,* makes it competent for the Supreme Court of the United States to review by certiorari any case in a Circuit Court of Appeals, certiorari having been granted, the jurisdiction of this Court is established.

STATEMENT OF CASE

At the time of his death on May 5, 1926 (R. 229), John P. Paul and his wife, Lena Paul, owned, as tenants by the entirety, a considerable number of parcels of real estate located in the City of Detroit, Michigan (R. 230-231). Two of these parcels were then encumbered by mortgages held by Petitioner, and subsequently (between October 9, 1926, and June 22, 1931) Lena Paul, as survivor of herself and her husband, or the children of John and Lena Paul, to whom Lena Paul conveyed title, mortgaged ten additional parcels to Petitioner (R. 106, 107, 109-111). All of these mortgages were acquired by Petitioner for value, in good faith and without any knowledge that Respondent had or claimed to have any interest in the property covered by these mortgages (R. 239). Default occurred in all of these mortgages, and Petitioner thereupon proceeded to foreclose all of these mortgages and to become the purchaser of all of the encumbered

properties at the foreclosure sales thereof (R. 233, 234, 235-239). The foreclosure sales were all completed prior to May 4, 1936 (R. 233, 234, 235-239).

On May 4, 1936 (just one day short of the expiration of Respondent's lien), the present suit was instituted (R. v) and Petitioner then learned for the first time that Respondent claimed a lien on all of the property on which Petitioner had held mortgages and of which it believed itself to be the absolute owner (R. 239). The Bill of Complaint alleged and the evidence adduced upon the trial established the following facts: After Lena Paul (describing herself as "widow of John P. Paul and joint owner of all of his property") had filed, on July 5, 1927, an Estate Tax Return disclosing a liability of $3,450.00 (R. 229), which was duly paid (R. 229) the Commissioner of Internal Revenue on March 14, 1930 asserted a deficiency in Estate Taxes of $23,271.84 against her husband's estate (R. 229, 230). An appeal was taken to the Board of Tax Appeals and on November 4, 1932, the Commissioner's determination was upheld (R. 230). No appeal was taken from the decision of the Board of Tax Appeals, and on February 19, 1933, the amount of the deficiency, together with interest in the amount of $8,080.20, was assessed against John P. Paul's estate (R. 230). No part of this deficiency was ever paid (R. 230).

All but two of Petitioner's mortgages antedated the assertion of the deficiency by the Commissioner. The two mortgages which were made subsequent to the date of the deficiency notice were made two years prior to the assessment of the deficiency (R. 106, 107, 109-112, 229-230).

The case was tried by the District Court on a stipulation of facts supplemented by testimony. It found that Petitioner acquired all of the mortgages, which it held,

for value, in good faith and without any knowledge that Respondent had or claimed to have any lien on or with respect to any of the property covered by those mortgages (R. 239). The District Court further found that the lien asserted in the present proceedings arose at the date of John P. Paul's death and that, even though unrecorded, was superior in right to such of Petitioner's mortgages as were made subsequent to John P. Paul's death (R. 247). Accordingly the Court decreed that the property covered by these mortgages should be sold in satisfaction of the lien asserted by Respondent (R. 249). It determined, however, that Respondent's lien for Estate Taxes was subsequent in time and inferior in right to such of Petitioner's mortgages as antedated John P. Paul's death (R. 248).

The District Court's decision and that of the Circuit Court of Appeals are predicated on the theory that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien for the collection of Estate Taxes which is separate and distinct from the general tax lien created by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) and that the provisions of the latter section, requiring that notice be filed to make the lien imposed by that section valid as against bona fide purchasers and encumbrancers, have no application to the lien referred to in *Section* 315 (*a*) *of the Revenue Act of* 1926. Both the District Court and the Circuit Court of Appeals rejected Petitioner's contention that, as so construed, *Section* 315 (*a*) *of the Revenue Act of* 1926 violated the Fifth Amendment of the Constitution of the United States and held untenable Petitioner's position that the lien described in that section in no event attaches to property held by a decedent and his spouse, as tenants by the entirety.

SPECIFICATION OF ERRORS RELIED ON

The Circuit Court of Appeals erred in the following respects:

1. In affirming the decree of the District Court.

2. In deciding that the lien referred to in *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) is separate and distinct from that imposed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

3. In determining that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien *ex proprio vigore*.

4. In determining that the lien herein sought to be foreclosed is valid against bona fide purchasers and encumbrancers for value, even though no notice of such lien is filed or recorded as provided in *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

5. In following the decision of the Court in *United States v. Security-First National Bank of Los Angeles*, 30 *Fed. Supp.* 113 (*D. C. Cal.*) *Appeal dismissed* 113 *Fed.* (2*nd*) 491 (*C.C.A.* 9*th*).

6. In failing to determine that if *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) is construed as imposing a lien which is effective against bona fide purchasers and encumbrancers for value (and particularly such purchasers and encum-

brancers from a surviving tenant by the entirety) without filing or recording, that section as so construed violates the Fifth Amendment of the Constitution of the United States.

7. In determining that the lien herein sought to be foreclosed attaches at any time to property formerly owned by a decedent and his spouse as tenants of an estate by the entirety.

SUMMARY OF ARGUMENT

Petitioner contends that the judgment of the Circuit Court of Appeals is erroneous for the following reasons:

1. The Circuit Court of Appeals erroneously decided that *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) imposes a lien which is separate and distinct from that prescribed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*). Actually the lien under foreclosure must be that imposed by the latter section for the former section imposes no lien *ex proprio vigore,* but merely describes certain incidents (such as duration and the property to which the lien attaches) of the lien imposed by *Section* 3186 *of the Revised Statutes* as applied to estate taxes. The legislative history of those two sections and the clearly defined Congressional policy of protecting bona fide purchasers and encumbrancers demonstrates beyond question that *Section* 315 (*a*) *of the Revenue Act of* 1926 should receive this

construction. This interpretation is consistent with statutory language; effectuates the intent of Congress and avoids the harsh and grossly absurd results which will follow from the construction of this section adopted by the Court below.

Since *Section* 3186 *of the Revised Statutes* (*and not Section* 315 (*a*) *of the Revenue Act of* 1926) is the generating source of the lien involved in these proceedings, that lien is inferior to the lien of the mortgages held by Petitioner because notice of that lien was not filed, as provided in that section, until long after the lien of those mortgages arose.

2. If the decision of the Circuit Court of Appeals properly construes the provisions of *Section* 315 (*a*) *of the Revenue Act of* 1926, that section as so construed violates the Fifth Amendment to the Constitution of the United States. This is so, not only because it thus imposes a secret lien, valid without recordation, against bona fide purchasers and encumbrancers, but also because protection against this secret lien is arbitrarily and capriciously denied to bona fide purchasers and encumbrancers from a surviving tenant of an estate by the entirety, while complete protection with respect to this lien is accorded innocent vendees and mortgagees from other transferees of property not subject to administration, the value of which is includable in the value of the decedent's gross estate for Estate Tax purposes.

3. Even if the interpretation accorded by the court below to *Section* 315 (*a*) *of the Revenue Act of* 1926 is proper and that section as so construed does not violate the Fifth Amendment of the Con-

stitution of the United States, Respondent is still not entitled to the relief granted it by the judgment which this Court is asked to review. Foreclosure was decreed against property which the decedent and his wife owned at the time of decedent's death, as tenants by the entirety, notwithstanding the fact that in no event does the lien under foreclosure at any time attach to property held in such a tenancy.

REFERENCE TO STATUTORY PROVISIONS

During the course of the pages of this brief which follow Petitioner will have occasion to refer frequently to *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*), *Section* 315 (*b*) *of the Revenue Act of* 1926, *as amended* (*Section* 827 (*b*) *of the Internal Revenue Code, as amended*), and *Section* 3186 *of the Revised Statutes, as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code as amended*). In the interest of readability and economy of expression Petitioner will frequently refer to these sections respectively, simply as "*Section* 315 (*a*)," "*Section* 315 (*b*)" and "*Section* 3186." Those sections are set forth in an appendix to this brief.

ARGUMENT

I. The lien herein sought to be foreclosed is imposed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

A

PREFACE

This branch of the case involves an interesting and difficult problem of statutory construction. The statutes to be construed are *Section* 315 (*a*) *of the Revenue Act of* 1926, *as amended* (*Section* 827 (*a*) *of the Internal Revenue Code*) and *Section* 3186 *of the Revised Statutes as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code, as amended*).

The pertinent provisions of *Section* 315 (*a*) *of the Revenue Act of* 1926 read as follows:

> "* * *. Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. * * *."

The applicable portions of *Section* 3186 *of the Revised Statutes* are the following:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien

> in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector * * *."

It is Petitioner's position that *Section* 315 (*a*) imposes no lien *ex proprio vigore* and that the lien to which that section refers is not a separate and distinct lien, but is rather the lien imposed by *Section* 3186. It is Petitioner's further contention that Respondent, in the present proceeding, must be attempting to foreclose the lien prescribed by *Section* 3186 for that is the only lien which Congress has conferred upon it for the collection of Estate Taxes. Petitioner takes the position that the only purpose of *Section* 315 (*a*) is to prescribe certain incidents of the lien imposed by *Section* 3186, designed to adapt that lien, in so far as is necessary, to the collection of Estate Taxes.

If, in construing *Section* 315 (*a*), one were to confine one's self exclusively to the language used, one might with equal plausibility reach two different conclusions—one that that section was intended to impose a lien; the other that the section imposes no lien but merely describes certain attributes of a lien imposed by another statutory provision. The words and grammatical construction of that section describe the idea of duration and character of a thing theretofore in existence as aptly as they suggest the concept of creation.

The problem of statutory construction involves more than the application of dictionary definitions to the words in which a legislative enactment is couched. "The meaning of a sentence may be more than that of the separate words as a melody is more than the notes." *Gregory v. Helvering,* 69 F. (2nd) 809 (C.C.A. 2nd). Where, as in the instant case, the language of the statute is susceptible of two different interpretations, that interpretation should be selected which appears most consonant with the probable purpose of the legislative body which enacted it and which avoids absurd and unreasonable results. Competing interpretations of a statutory provision must be weighed in the light of legislative history and the manner in which that provision operates on transactions claimed to fall within the ambit of its intended operation. *Helvering v. New York Trust Co.,* 292 U. S. 455.

B

The Legislative History of *Section* 315 (*a*) *of the Revenue Act of* 1926, *as amended, and of Section* 3186 *of the Revised Statutes* clearly demonstrates that the former section was not intended to impose a lien *ex proprio vigore.*

The ancestor of modern Federal Tax Liens, conferred on Respondent to aid it in the collection of taxes which it imposes, is *Section* 3186 *of the Revised Statutes of the United States of* 1879. This section was a codification of an Act of July 13, 1866 in which the forerunner of *Section* 3186 *of the Revised Statutes* first appeared. See *c.* 184,§9, 14 *Stat.* 107. *Section* 3186 *of the Revised Stat-*

utes, therefore, dates from 1866. That section when enacted applied, and still applies, to "any tax" and imposes a lien on "all property" of the taxpayer. Its application is general in the broadest possible sense. It was in existence prior to the adoption of the Sixteenth Amendment to the Constitution of the United States and the Revenue Acts enacted thereunder, including those imposing Federal Estate Taxes. *Section* 3186 has, therefore, served as a nucleus around which were built subsequent lien provisions appearing in Revenue Acts imposing specific types of taxes. It is, therefore, important to examine the legislative process by which Congress built subsequent legislation about that nucleus.

Section 3186 (*which was the Act of July* 13, 1866, c. 184, §9, 14 *Stat.* 107, *as revised and amended by an Act of March* 1, 1879, *c.* 125, §3, 20 *Stat.* 331), originally provided as follows:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person."

Prior to the enactment of the first Revenue Act imposing an income tax pursuant to the Sixteenth Amendment to the Constitution of the United States, Congress by *Act* 451, *passed March* 4, 1913, *c.* 166, 37 *Stat.* 1016, added the following proviso to *Section* 3186 *of the Revised Statutes*:

"Provided, however, That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the District court of the district within which the property subject to such lien is situated: Provided further, That whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, and in the State of Louisiana in the parishes thereof, and in the States of Connecticut, Rhode Island, and Vermont in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records of the towns and cities, then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, or in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records in the States of Connecticut, Rhode Island, and Vermont of the towns or cities within which the property subject to the lien is situated."

When Congress enacted the first income tax law pursuant to the Sixteenth Amendment in the Fall of 1913, it was confronted with the problem of selecting methods of enforcing the tax which it imposed. One of the most ancient and time-honored methods of enforcing collection of taxes was by the imposition of a lien. It is hardly to be assumed that Congress is marshalling methods of enforcement of the newly imposed income taxes dismissed from its consideration the ancient and efficient method of imposing a lien. The Common Law lien of the sovereign

for the collection of taxes has never existed in favor of the United States. *United States v. The State Bank of North Carolina*, 6 *Peters* 29; *Equitable Trust Company v. Connecticut Brass & Manufacturing Corporation*, 290 F. 712 (C.C.A. 2nd); *United States v. Middle States Oil Corporation*, 18 F. (2nd) 231 (C.C.A. 8th); *In Re Wyley Co.*, 292 F. 900 (N.D. Ga.). If the device of lien was to be included in Respondent's arsenal of weapons for enforcement, it was necessary that there be express statutory provision therefor. In providing the Government with a lien, Congress did what it did with respect to all other administrative provisions. It adopted a policy of taking existing statutory provisions applicable to Internal Revenue Taxes generally and made only such changes as were necessary to make them function efficiently in their new surroundings. It did not adopt a whole new set of administrative provisions, separate and distinct from those in force with respect to existing Internal Revenue Taxes. In short, it built its system of the administration and enforcement of income taxes into the existing scheme of administration and enforcement of other Internal Revenue Taxes.

In the existing scheme of things, it found *Section* 3186, which provided a lien for "all taxes" on "all property" of the taxpayer. This it found sufficient to arm those charged with the enforcement of income taxes with the desired lien. Congress did not enlarge or diminish the lien provided by *Section* 3186 but accepted it as it was. *Section* 3186 remains today the basic and indeed the only lien provision for the enforcement of income taxes.

In 1916, three years after the imposition of the first modern income tax, Congress enacted the first Federal Estate Tax. The policy of Congress of building into

the existing superstructure of methods of administration and enforcement of Internal Revenue Taxes generally, the system of administration and enforcement of a newly enacted tax, had not changd. In adopting a system of administering and collecting the newly imposed Federal Estate Tax, Congress started with the assumption that existing methods of administration and collection were to be adopted. Congress did not leave this matter to inference; it so provided in language which leaves no doubt of its intent. *Section* 211 *of the Revenue Act of* 1916, the second from the last section in Title II of that Act (which imposed the first Federal Estate Tax) provided as follows:

> "That all administrative, special and general provisions of law, *including the laws in relation to the assessment and collection of taxes* not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions.'
>
> (Italics supplied)

One of the "laws in relation to the collection of taxes" then in existence was *Section* 3186, which provided a lien for "any tax" on "all property" of the taxpayer.

Is it reasonable to assume that, with *Section* 3186 before it, the express terms of which made that section applicable to the Estate Tax which it proposed to enact, Congress provided Respondent (by adopting *Section* 209 *of the Revenue Act of* 1916, the predecessor of and identical with *Section* 315 (*e*) *of the Revenue Act of* 1926), with a lien separate and distinct from and in addition to that already provided by *Section* 3186? Of is it more reasonable to suppose that by including *Section* 209 *in the Revenue Act of* 1916, Congress merely intended to

provide that the lien imposed by *Section* 3186 as applied to Estate Taxes should attach, not when the assessment list was received by the Collector, but rather at the date of the decedent's death, (see, *Rosenberg v. McLaughlin*, 66 F. (2nd) 271 (C.C.A. 9th)), and that the lien imposed by *Section* 3186 should from that time attach to the gross estate of the decedent and continue in existence (unless the tax was sooner paid in full) for a period of ten years. In view of the avowed Congressional policy of utilizing existing methods of administration and enforcement for newly exacted taxes rather than adopting new methods of administration and enforcement, the latter is the only reasonable construction.

This conclusion is reinforced by the obviously incomplete character of *Section* 315 (*a*). If Congress had intended that section to be a separate, distinct and self-operating provision, it is reasonable to suppose that the National Legislative Body would at least have specified in whose favor the lien therein mentioned runs. *Section* 315 (*a*) is, however, completely silent in this regard. Indeed, if that section is to be regarded as a self-contained entity, as Respondent contends, it would seem reasonable to conclude that the lien to which that section refers runs in favor of the Commissioner of Internal Revenue, since he alone is given authority to release the lien. In that event, the Commissioner of Internal Revenue and not the Respondent would be the proper party plaintiff in this action. The explanation of this apparent hiatus in *Section* 315 (*a*) must be that Congress in enacting that section did not intend to impose a lien but was merely describing certain attributes of a lien which it had already imposed by *Section* 3186 and which by the specific

terms of that section ran in favor of the United States. No less significant in this regard than the failure of *Section* 315 (*a*) to specify in whose favor the lien therein mentioned runs, is its omission of the following language (or language similar thereto) contained in *Section* 3186: "(including any interest, penalty, additional amount or addition to such tax, together with any costs which may accrue in addition thereto)." The inclusion of this language in *Section* 3186 embodies a Congressional judgment that the word "tax" standing alone is not sufficiently broad to include interest, penalties and the other additional amounts described in the parenthetical language quoted above. Respondent, in the present proceeding, does not limit its claim to the amount of the unpaid tax. It seeks to recover interest as well. This it is not entitled to recover if *Section* 315 (*a*) is separate and distinct from *Section* 3186. To sustain its right to recover interest, as well as its right to maintain this suit, Respondent is forced to borrow surreptitiously from *Section* 3186 to supply the deficiencies in *Section* 315 (*a*). Apparently Respondent looks on *Section* 3186 much in the same fashion as the English Gentleman of the Mid-Victorian Era regarded the money lenders who financed their improvidence. It gladly borrows the aid of that section when it finds such assistance necessary to achieve its purpose but denies both the debt and the lender when either seeks even a passing nod of recognition.

Section 3186 provided, when the *Revenue Act of* 1916 was enacted, and still provides that the lien imposed by that section shall attach when the assessment list is received by the Collector "unless another date is specifically fixed by law." With this provision in mind, Congress exercised its reserved right of specification and

enacted *Section* 209 *of the Revenue Act of* 1916 to make the lien of *Section* 3186 attach at the date of the decedent's death. This change Congress undoubtedly conceived necessary to forestall claims by beneficiaries of a decedent's estate that distribution freed them of the obligation to apply the distributed property in satisfaction of unpaid estate taxes and to make effective as against such beneficiaries the remedy of distraint. See, *Rosenberg v. McLaughlin,* 66 Fed. (2nd) 271 (C.C.A. 9th). Since a dead man is technically incapable of owning any property, death necessarily marks the transmission of "all property and rights in property, whether real or personal belonging to" the decedent to his personal representative for administration and distribution. Such property and property rights become transmuted into the decedant's "estate". By providing in *Section* 315 (*a*) that the lien imposed by *Section* 3186 should, as applied to estate taxes, attach to the "gross estate" of a deceased taxpayer, Congress merely recognized that transmutation. The adjective "gross" was used to insure that the lien would encompass all of the property comprising the "estate" undiminished by claims arising *inter vivos* which had not become a lien against specific property at the date of death and hence did not reduce the decedent's interest in specific property. Because the estate tax is imposed on an amount which includes the value of property which does not technically belong to the decedent (e. g., property transferred in contemplation of or intended to take effect in possession or in enjoyment at or after death) Congress extended the lien imposed by *Section* 3186 to certain types of such property by enacting *Section* 315 (*b*). It did not, however, extend this lien to property held by the decedent and another, as tenants by the entirety. (See pages 49 to 53 of this brief.)

Section 315 (*a*) specifically limits the duration of the lien imposed by *Section* 3186 to ten years as applied to Estate Taxes. *Section* 3186 does not specifically prescribe the period of enforceability of the lien thereby imposed and Congress apparently deemed it desirable to mark its termination as applied to estate taxes. Presumably it selected the ten-year period as one which would approximate the maximum period of time during which an estate was likely to be in the process of administration.

Section 3186 has remained in force since its passage in 1866 and since 1913 has contained provisions requiring the filing of notice of the lien imposed thereby to make that lien valid as against bona fide purchasers and encumbrancers. *Section* 209 *of the Revenue Act of* 1916 (describing certain attributes of the lien imposed by *Section* 3186 as applied to the collection of Estate Taxes) was reenacted as *Section* 409 *of the Revenue Act of* 1918, as *Section* 409 *of the Revenue Act of* 1921, as *Section* 315 (*a*) *of the Revenue Act of* 1924 and finally as *Section* 315 (*a*) *of the Revenue Act of* 1926. In each of these Revenue Acts there was a provision substantially similar to *Section* 211 *of the Revenue Act of* 1916 making applicable to the taxes imposed by those Revenue Acts provisions of existing law in relation to the assessment and collection of taxes, including *Section* 3186. See *Section* 1305 *of the Revenue Act of* 1918, *Section* 1300 *of the Revenue Act of* 1921, *Section* 1100 *of the Revenue Act of* 1924, and *Section* 1100 *of the Revenue Act of* 1926. What has been said above with respect to the relation between *Section* 3186 and *Section* 209 *of the Revenue Act of* 1916 *applies* equally well to the relationship between the former, and sections reenacting *Section* 209 *of the Revenue Act of* 1916, *including Section* 315 (*a*) *of the Revenue Act of* 1926.

The history of *Section* 315 (*a*) and *Section* 3186 subsequent to 1926 simply serves to confirm our contention that the latter section is the generating source of the lien mentioned in the former.

When Congress adopted the *Revenue Act of* 1928, it was deemed advisable to make specific provision with respect to the manner in which taxpayers might procure releases of tax liens. *Reports of Ways and Means Committee of the House of Representatives* and of the *Finance Committee of the Senate on the Revenue Act of* 1928. The release provisions which Congress finally adopted as part of *Section* 613 (*a*) *of the Revenue Act of* 1928 were added, not to *Section* 315 (*a*). Instead they were incorporated in *Section* 3186 as part thereof and specifically made applicable to all types of Internal Revenue Taxes. It is odd, indeed, if *Section* 315 (*a*) imposes a lien which is separate and distinct from that prescribed by *Section* 3186, that Congress did not amend both sections by specifically adding similar release provisions to each. The explanation of the manner in which Congress made that amendment indicates quite clearly that it regarded *Section* 3186 as imposing a basic lien for all taxes and that it was continuing its policy of building the Federal Statutory Law relating to liens around that provision as a nucleus. It also indicates that Congress conceived *Section* 315 (*a*) as an adjunct to *Section* 3186 and not as a provision separate, distinct and independent of the latter section.

At the time that Congress adopted the *Revenue Act of* 1934, it again indicated that it regarded *Section* 3186 as the generating source of all Federal Tax Liens. Among the recommendations made by the Secretary of the Treasury with respect to the Revenue Act of 1934 was the following:

"At the present time there are two methods provided by law for releasing liens for estate and gift taxes. The authority provided in section 315 (a) of the Revenue Act of 1926 and in section 510 of the Revenue Act of 1932 is fully adequate. The Treasury recommends the elimination of the second method, which is authorized by section 3186 of the Revised Statutes, as amended by section 613 (a) of the Revenue Act of 1928. This amendment would be accomplished by adding to the end of that section the words 'except the lien imposed by section 315 of the Revenue Act of 1926, and the lien imposed by section 510 of the Revenue Act of 1932'."

The underlying assumption of the recommendation of the Secretary of the Treasury was that *Section* 315 (*a*) was a separate, distinct and self-operating section, not in any way related to *Section* 3186. It is significant that Congress rejected this recommendation for it indicates unequivocal Congressional disapproval of the underlying theory of the recommendation.

Before concluding this subsection of the brief, one further significant point should be noted. Respondent's present position that *Section* 315 (*a*) imposes a lien and one which is separate and distinct from that imposed by *Section* 3186 contrasts strangely with the complete absence of even the slightest intimation in the Regulations promulgated by the Commissioner of Internal Revenue interpretative of *Section* 315 (*a*) (and the predecessors of that section in previous Revenue Acts) that such was or would be the position of Respondent.

C

The construction of *Section* 315 (*a*) *of the Revenue Act of* 1926, *as amended* (*Section* 827 (*a*) *of the Internal Revenue Code*) and of *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) urged by Petitioner will effectuate a well defined Congressional policy of protecting bona fide purchasers and encumbrancers against the evils of secret tax liens.

We alluded above to the fact that as originally enacted *Section* 3186 contained no provisions requiring notice of the lien imposed thereby to be filed or recorded in order to make the same effective against bona fide purchasers and encumbrancers. While the law stood in this posture, *United States v. Snyder,* 149 U. S. 210, and *United States v. Curry,* 201 F. 371 (D. C. Md.) were decided. Broadly speaking, these cases held that since *Section* 3186 contained no provision requiring the filing or recording of notice of the lien imposed thereby to make it effective against bona fide purchasers and encumbrancers no such filing or recording of notice was necessary. The repercussions of those decisions are well stated by the Circuit Court of Appeals for the Third Circuit in *United States v. Beaver Run Coal Company,* 99 F. (2nd) 610 (C.C.A. 3rd). Speaking of the reason for the amendment of *Section* 3186 to require the filing or recording of notice to make the lien imposed thereby effective against bona fide purchasers and encumbrancers, the Court said:

> "On May 1, 1893, the United States Supreme Court, in the case of *United States v. Snyder,* 149 U. S. 210, held that the lien created by the above section was not subject to the recording laws of

> the states, and that it was enforceable even against a subsequent bona fide purchaser for value without notice. This decision cast a cloud of uncertainty upon titles to land throughout the United States and, before long, under the leadership of the American Bar Association, agitation for remedial legislation began. By the Act of March 4, 1913, Congress amended Section 3186 by adding thereto a provision—'that such lien shall not be valid as against any mortgagee, purchaser or judgment creditor until' certain recording and filing requirements, thereafter set forth, had been fulfilled. 37 Stat. 1016."

The amendment in 1913 of *Section* 3186 to require filing or recording of notice of the lien imposed thereby to make it effective against bona fide purchasers and encumbrancers marked the inauguration of a policy of protecting such innocent vendees and mortgagees which Congress has consistently adhered to.

When Congress enacted the *Revenue Act of* 1939, it again reaffirmed its policy of according protection to bona fide purchasers and encumbrancers of property subject to liens for Internal Revenue Taxes by adopting *Section* 401 *of the Revenue Act of* 1939 amendatory of *Section* 3186 which was reenacted as *Sections* 3670 to 3677 *of the Internal Revenue Code. Section* 401 *of the Revenue Act of* 1939 *amends Section* 3672 *of the Internal Revenue Code* to add as subparagraph (b) thereof the following:

> "(b) (1) *Exception in Case of Securities.*— Even though notice of a lien provided in section 3670 has been filed in the manner prescribed in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as

amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser, of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

"(2) *Definition of Security.*—As used in this subsection the term 'security' means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing negotiable instrument; or money.

"(3) *Applicability of Subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose."

The reason for the adoption of *Section* 401 *of the Revenue Act of* 1939 is set forth in the *Report of the Ways and Means Committee on Section* 401 *of the Revenue Act of* 1939 in the following language:

"The chief purpose of section 401 is to amend section 3672 by adding a new subsection (b) dealing with securities. * * *.

"The new provisions dealing with securities are considered necessary because of a recent decision of a district court (United States v. Rosenfeld, E. D. Mich., 1938, 26 F. Supp. 433). This case held that a bona fide purchaser for value of shares of stock from a seller against whom a notice of lien for Federal income taxes had been duly filed prior to the sale took subject to the lien even though the purchaser did not have notice or knowledge of such lien. While it is true that the filing of the notice of the tax lien may constitute notice in the case of real property, it is inequitable for the statute to provide that it constitutes notice as regards securities. For example, when a broker purchases a security for his customer on the exchange, it is obviously impossible for him to check all the offices in which a notice of the tax lien may be duly filed to determine whether the security is subject to such lien. A like situation exists with respect to over-the-counter and direct transactions in securities. An attempt to enforce such liens on recorded notice would in many cases impair the negotiability of securities and seriously interfere with business transactions. The adoption of the amendment will remove an existing hardship without causing any undue loss of revenue."

See, also, *The Report of The Senate Finance Committee covering Section* 401 *of the Revenue Act of* 1939.

The adoption of *Section* 401 *of the Revenue Act of* 1939 is important, not only because it reaffirms a clearly defined Congressional purpose to protect bona fide purchasers and encumbrancers, but also because it once again indicates that Congress regards *Section* 3186 as the basic lien provision of the Federal Statutory System.

In amending *Section* 3186 to require the filing or recording of notice of the lien imposed thereby to make

the same effective against bona fide purchasers or encumbrancers, Congress intended to deracinate the evils of the doctrine of *United States v. Snyder*, 149 U. S. 210. See *United States v. Beaver Run Coal Company*, 99 F. (2nd) 610 (C.C.A. 3rd), *supra*. Congress enacted *Section* 401 *of the Revenue Act of* 1939, *amendatory of Section* 3186 *of the Revised Statutes of the United States* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*) to protect bona fide purchasers and encumbrancers of securities against the lien accorded to Respondent for the collection of. Internal Revenue Taxes even though notice of that lien has been filed or recorded as therein provided. See *The Report of the Ways and Mans Committee on Section* 401 *of the Revenue Act of* 1939, *supra*. If the contention advanced by Respondent (and adopted by the District Court and the Circuit Court of Appeals) is sustained and *Section* 315 (*a*) is held to impose a lien separate and distinct from that embodied in *Section* 3186, those clearly enunciated Congressional purposes will be unfulfilled. If the construction urged by Petitioner is adopted, the result sought to be accomplished by Congress is completely achieved. It is hardly reasonable to suppose that Congress left its object but half achieved and singled out the Federal Estate Tax to occupy a preferred position in this regard. To adopt the construction advanced by Respondent would be to thwart a plainly manifested Congressional intent and restore with respect to Estate Taxes (including such taxes on securities) the intolerable situation which existed with respect to all property under the doctrine of *United States v. Snyder*, 149 U. S. 210, *supra*, and with respect to securities prior to the enactment of *Section* 401 *of the Revenue Act of* 1939.

Not only would the decision of the court below if sustained run counter to a well defined Congressional policy, but it would produce absurd and inexplicable results.

Section 315 (*b*) (*Section* 827 (*b*) *of the Internal Revenue Code,* see appendix) would accord to bona fide purchasers and encumbrancers acquiring property from a donee who received the same pursuant to a transfer under which the donor reserved to himself the income for life, complete protection against the lien for Estate Taxes. Yet an innocent vendee or mortgagee from a surviving tenant by the entirety finds his property saddled with a lien. A search for differences justifying such varying treatment is fruitless for no differences exist. The situation of the creator of a tenancy by the entirety and the donor who has reserved the income from transferred property are virtually identical, except that the former has reserved the right to only one-half of the income for life instead of all. *Commissioner v. Hart,* 76 Fed. (2nd), 864 (C.C.A. 6th); *Gessner v. Commissioner,* 32 B.T.A. 1258. The surviving tenant of an estate by the entirety and the donee under a transfer reserving the life income occupy positions which are indistinguishable in terms of substantial rights. Any lack of precise identicalness which may arise from the fact that the surviving tenant must outlive the creator of the tenancy in order to enjoy the fruits of the creator's beneficence is easily eliminated. Assume the retention (which does not in any way affect the operation of *Section* 315 (*b*)) by donor, who has reserved the income for life, of the oft reserved right of reversion in the event of the donee's death prior to that of the donor and the two cases become indistinguishable.

There is nothing in one case which would suggest inquiry into the possibility of unpaid estate taxes which is not equally present in the other. If it be thought that the loss of revenue which might result is sufficient to justify the visitation of the hardship of a secret lien

on a bona fide purchaser from a surviving tenant of an estate by the entirety, it should be remembered that similar considerations should justify a similar depredation with respect to an innocent vendee or mortgagee whose transferor is a donee of property the income from which the donor has reserved to himself. It is unbelievable that Congress should have intended to bring about the arbitrary and capricious result which the interpretation of *Section* 315 (*a*), adopted by the court below, produces.

In the light of the foregoing considerations, the language of the Circuit Court of Appeals for the Third Circuit in *United States v. Beaver Run Coal Co.*, 99 Fed. (2nd) 610, is particularly worthy of note. In that case the court held that the lien of the United States for Federal Income Taxes which had *not* been filed or recorded as provided in *Section* 3186 did not prevail against a purchaser or encumbrancer *even though he possessed actual notice of the claimed lien.* In the course of its opinion the court said:

> "It is a well established doctrine that a clear, unambiguous statute must be literally construed. Hamilton v. Rathbone, 175 U. S. 414, 20 S. Ct. 155, 44 L. Ed. 219; Thompson v. United States, 246 U. S. 547, 38 S. Ct. 349, 62 L. Ed. 876; Crooks v. Harrelson, 282 U. S. 55, 51 S. Ct. 49, 75 L. Ed. 156; Helvering v. New York Trust Co., 292 U. S. 455, 54 S. Ct. 806, 78 L. Ed. 1361. *If an apparently unambiguous statute contains hidden ambiguities, or if a literal construction would clearly defeat the object intended by Congress, or if a literal construction would result in absurdities so gross 'as to shock the general moral sense,' then the courts may be entitled to depart from the strict wording in order to give the statute a reasonable construction. Helvering v. New York Trust Co., supra, Crooks v. Harrelson, supra.*

"In the instant case, however, the literal interpretation of section 3186 does not contain hidden ambiguities, does not defeat the object intended by Congress and does not result in any shocking absurdity. Indeed, any possible absurdity resulting from such an interpretation is far less shocking than the situation existing prior to 1913 when titles to land, which had always been governed by state law, were clouded by the provisions of a federal statute * * *."

(Italics ours)

D

This Court should not follow the erroneous decision of the District Court for the Southern District of California in *United States vs. Security-First National Bank of Los Angeles, et al.*, 30 Fed. Supp. 113, on which the court below relied.

In reaching its decision that the lien herein sought to be foreclosed is entitled to priority over the lien of Petitioner's mortgages, the court below relied almost exclusively on the decision of the California District Court in *United States v. Security-First National Bank of Los Angeles, et al.*, 30 Fed. Supp. 113, appeal dismissed by *Stipulation*, 113 Fed. (2nd) 491 (C.C.A. 9th). That case involved an action by the United States of America to collect its claim for unpaid Estate Taxes through the enforcement of its lien therefor, against a certain parcel of real estate acquired by one of the defendants as the result of the foreclosure of a mortgage made by the estate of a decedent to a bona fide encumbrancer. The decedent had died on February 13, 1926 leaving an estate including the parcel of real estate in question on which a Federal Estate Tax was payable. An Estate Tax return

should have been filed by February 13, 1927. In fact none was filed until February 2, 1933, nearly seven years after the decedent's death. Subsequent to the filing of the return the tax was assessed and appeared for the first time in the April and June 1933 assessment lists. On August 11, 1933, notice of the lien was filed by the collector pursuant to *Section* 3186. The mortgage under which the defendant claimed was made sometime prior to August 11, 1933, but the exact date of the mortgage does not appear. We may safely conclude, however, that the mortgage antedated the filing of the Estate Tax Return by a wide margin. The court held that the lien of the United States for Estate Taxes was entitled to priority over the lien of defendant's mortgage. While that case reaches a conclusion which is in accord with the decision below, the failure of the court to give consideration to the crucial question which both that case and this case present and the bases on which the court rested its decision, counsel this Court to give it little weight as a precedent.

The court in the *Security-First National Bank* case rejected at the outset the contention of defendant's counsel that the lien referred to in *Section* 315 (*a*) did not, as against a bona fide purchaser, attach at the date of the decedent's death. The court, however, conceded that the vital question was not the date on which the lien attached, but whether it was entitled to priority as against a subsequent bona fide purchaser. The defendant in that case then argued that the provisions of *Section* 3186, requiring the recording of notice of the lien imposed thereby (to make it effective against bona fide purchasers and encumbrancers), should be read into *Section* 315 (*a*). The court attempts to answer that argument with the statement that this argument assumes that here can be

but one lien to enforce a tax in favor of the Government. It is doubtful if the argument of the defendant in the *Security-First National Bank* case was so premised. Whether it was or not, however, is immaterial. We concede that Congress has the power to impose a hundred liens for the same tax if it so desires. The real question which this case presents and which the *Security-First National Bank* case presented is not whether Congress has the power to impose two liens for the same tax, but whether it did in fact exercise its undoubted authority in this regard. The court in the *Security-First National Bank* case assumed rather than decided that Congress did assert its prerogative and did impose two separate and distinct liens (one by *Section* 315 (*a*), and one by *Section* 3186). Indeed the crucial question of whether those two sections imposed separate and distinct liens was not even considered by the court for the defendant in that case seems not to have even argued the point. The opinion of the Circuit Court of Appeals in the instant case indicates all too clearly that it give insufficient independent consideration to this pivotal problem and placed implicit reliance on the conclusion of a court which gave it none at all.

The *Security-First National Bank* case quite frankly recognizes the harshness of the result which it reached. The court suggests that its conclusion must be presumed to be in accord with the intent of Congress for that legislative body permitted to remain unchanged for a period of twenty-three years a statute whose defect could have been cured by a simple amendment. This assertion is so completely untenable that it is difficult to conceive how the court could have seriously advanced it. It is true that the statute in question has remained unaltered since

its original enactment, but the failure of Congress to act is hardly a reason for assuming that the result, which the *Security-First National Bank* case reached in 1939, has Congressional approbation. Since the original enactment of *Section* 209 *of the Revenue Act of* 1916 (*the* predecessor of *Section* 315 (*a*)) relatively few decided cases have involved its interpretation, or that of its successors. Prior to *Security-First National Bank* case there was not a single reported decision of a State or Federal Court which even considered the effectiveness of the lien referred to in those sections, against a bona fide purchaser or encumbrancer. Perhaps the great paucity of decisions is accounted for by the fact that it required twenty-three years to toughen Respondent's conscience to the extent necessary for the presentation of the unconscionable argument which it advanced in the *Security-First National Bank* case and again in this case. Whatever may have been the reason, it is clear that Congressional approval cannot be inferred from its failure to alter a statute to avoid the harsh results of a nonexistent interpretation. It is much more reasonable to assume that Congress supposed that *Section* 315 (*a*) would receive the interpretation which Petitioner urges, and that its surprise at the decision of the *Security-First National Bank* case was no less complete than that of the Bar.

The final argument of the court in the *Security-First National Bank* case is that its decision may be sustained on grounds of policy. It points out that under the provisions of *Section* 3186 the Collector knows the date of the inception of the lien since the lien takes effect when the assessment list is received and hence the Collector is able to file the required notice immediately upon the accrual of the lien. The same is not true says the court

under the provisions of *Section* 315 (*a*) for the Collector has no way of learning whether an estate tax is due on the date on which the lien accrues without extensive investigation. That argument breaks down completely upon analysis. The Collector knows that under the construction placed on *Section* 315 (*a*) the lien therein referred to has its inception on the death of decedent. The taxes which this lien secures are then owing though not payable until a later date. He does not know the amount of the estate tax, if any, then owing by such decedent, but Congress imposed no requirement that the notice of lien to be valid must specify the amount of the tax. Actually the only fact which the Collector is required to learn to be in full possession of all information necessary to enable him to file notice of the lien is the occurrence of the decedent's death. This information is available to him shortly after the Decedent's death for *Section* 304 (*a*) *of the Revenue Act of* 1926 (*Section* 820 *of the Internal Revenue Code*) enjoins upon an executor the duty of notifying the Collector of the death of the decedent whose estate he is administering. This notice must be filed within two months after the decedent's death or within a like period after the executor's qualification. To conclude that any substantial portion of the decedent's property will have been transferred or mortgaged during the short period of time between death and the giving of this notice is to assume a traffic in the property of decedent's estates which simply does not exist.

Even if it were true that the lien referred to in *Section* 315 (*a*) could not be made effective, without extensive investigation, against the whole world from the moment of its accrual, were the filing of notice required, that is no

reason for assuming that Congress did not intend to require such filing as a condition precedent to effectiveness of that lien against bona fide purchasers and encumbrancers. It has never been the policy of the law to deny protection to an interest merely because such protection would qualify the rights of others. Even the cherished right of free speech has never been held to be absolute on the ground that to recognize any qualification of that right would impair its complete enjoyment.

The fallacy of the final argument of the court in the *Security-First National Bank* case becomes more apparent the more one examines it. The basic assumption of that argument is that Congress by enacting *Section* 315 (*a*) intended to provide Respondent with a lien which can be made effective against the entire world from the date of the accrual of the tax, the collection of which it is designed to enforce. The court points to no actual indicia of such a legislative intent. Indeed, such evidence of Congressional purpose as exists points to a precisely contrary conclusion. The general tax lien statute (*Section* 3186), as applied to income taxes does not accrue from the date of the event, i.e., the receipt of taxable income, which gives rise to the tax. It does not even arise when the tax on that income becomes payable which is approximately seventy-five days after the end of the taxable year during which that taxable income is received. The lien dates from the date on which the assessment list is received by the Collector, which of necessity is subsequent (and, in case of a deficiency, long subsequent) to the time when the tax for which the lien is given, becomes payable. The court in the *Security-First National Bank* case suggests no reason

to support its assumption that a completely different Congressional purpose exists with respect to Estate Taxes. Indeed, it would be impossible to adduce a reason, for the problem and method of collecting estate taxes is precisely the same as that of collecting Income Taxes. Both Income and Estate Taxes become payable at a time subsequent to the date of the occurrence of the event which gives rise to the tax. Income Taxes are payable within approximately seventy-five days after the close of the taxable period during which the receipt of the taxed income occurs. Estate Taxes are payable within fifteen months after the death of the decedent which marks the incidence of the tax. In both cases the taxpayer or his representative is required to file a return of the tax payable and a summary of the facts which form the basis of the computation of the tax. In the case of neither tax will the Collector of Internal Revenue be able to ascertain without extensive investigation whether a tax is payable or its amount, until the taxpayer files the required return. Nor is there less likelihood that funds will be available for the collection of Estate Taxes than for Income Taxes because of the greater probability that the property, out of which Estate Taxes are payable, will be dissipated. Indeed, the reverse is true. Income and accumulated property of a living taxpayer have a much greater tendency to be fluid and to be dissipated than that of a decedent. In addition, the primary fund for the payment of Estate Taxes will be in the hands of a personal representative of a decedent who will be much less likely to squander the fund, not only because he is accountable to a court, but also because he may render himself personally liable for a tax by the dissipation of funds, the use and benefit of which he did

not personally enjoy. In short, if it be assumed that the desideratum is a lien which is best calculated to insure the collectibility of the tax assessed, every reason exists for making the lien for Income Taxes more stringent than that for Estate Taxes. Yet clearly such is not the case for the lien for Income Taxes is hardly such as to insure maximum collectibility. As was pointed out above, the lien does not even arise until long after the tax is payable. It never becomes effective against bona fide purchasers and encumbrancers of securities and it becomes effective against such innocent vendees and lienees of other property only from the time of filing notice. The lien with which Congress has provided Respondent for the collection of Income Taxes is indeed far from a perfect lien. In view of this, it taxes one's credulity beyond all permissible limits to assume that in the case of Estate Taxes, Congress accorded Respondent the perfect lien which dates from the event which gave rise to the tax, and from that moment on, is good against all the world, innocent vendees and mortgagees included. It has never been suggested that the requirement of filing notice of the lien for Income Taxes to make that lien effective against bona fide purchasers and encumbrancers placed the public revenue in jeopardy. Indeed, when *Section* 401 *of the Revenue Act of* 1939 was enacted to provide that the lien imposed by *Section* 3186 should not be effective against bona fide purchasers and encumbrancers of securities, Congress made it clear that it conceived that the benefits accomplished by that enactment far outweighed the evils which might arise from the loss of revenue resulting from that sweeping concession. See *The Report of the Ways and Means Committee on Section* 401 *of the Revenue Act of* 1939 quoted on page 25, *supra*. Any

loss of revenue which might result from according *Section* 315 (*a*), the construction which we urge would be infinitely smaller for that construction would still leave Respondent with a lien for Estate Taxes which has a much wider scope than that for Income Taxes. The adoption of that interpretation would provide Respondent with a lien having its inception at the date of the decedent's death and valid from that date, without the necessity of filing or recording, against the whole world with the exception of persons occupying the status of bona fide purchasers and encumbrancers.

We have felt it necessary to discuss *in extenso* the unsoundness of the bases and the fallaciousness of the hypotheses on which the court in the *Security-First National Bank* case rested its decision because the court below accepted without analysis (as did the District Court in *United States v. Maguire, et al.*, 42 Fed. Supp. 337*) the conclusion reached in that case. The importance of the problem which this case presents and the results which will be produced if the decision of the court below is sustained, merit the fullest consideration of every phase of the arguments here presented, none of which appear to have been urged upon the court in the *Security-First National Bank* case. The brief and almost cryptic opinion of the court below in the instant case indicates all too clearly a failure on its part to analyze completely the questions which this case involves in the light of the *arguments* presented.

(*) In this case the court solely on the authority of *Security-First National Bank* case held that the lien of a judgment based on a claim arising during the decedent's lifetime and rendered subsequent to his death was inferior to the lien of the United State for Estate Taxes not recorded until after the rendition of the judgment.

II. If *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) is construed as imposing a lien which is effective against bona fide purchasers and encumbrancers without the necessity of filing or recordation of notice thereof, that section as so construed violates the Fifth Amendment of the Constitution of the United States.

The Fifth Amendment to the Constitution of the United States lays under interdict action on the part of Respondent which deprives its citizens of their property without due process of law. Primarily and fundamentally that constitutional prohibition is designed to insure the observance by the Government of the United States of the basic principles of fair play in its dealing with its citizens. It marks out a domain where a citizen may seek asylum from the arbitrary and capricious acts of the sovereign which tend to subvert those principles. *Section* 315 (*a*) given the construction adopted by the court below invades that protected zone.

It should be sufficient to bring the section in question within the scope of enactments condemned by the Fifth Amendment that, as interpreted by the Court of Appeals, it accords Respondent a secret lien and sanctions the expropriation of property of an innocent purchaser in satisfaction of taxes owed by another and arising out of a transaction to which the impeccant owner is a complete stranger. A doctrine so replete with unfairness is offensive to the toughest conscience. The vice of the enactment under consideration does not, however, end there. If the construction sanctioned by the decision under review is adopted, we must attribute to Congress an intention of arbitrarily and unreasonably singling out,

as the special object of confiscation, the property of a small segment of a larger class of its citizens all occupying precisely the same legal position.

The value of a decedent's gross estate for Estate Tax purposes includes the value of much property which is not part of his estate for purposes of administration. The property so included has in common the characteristic that death terminates a retained interest which is less than complete ownership. The principal categories into which property of this type falls are the following: (1) Property held by the decedent and another or others as joint tenants or as tenants by the entirety; (2) property subject to a transfer intended to take effect in possession or enjoyment at or after death; (3) property subject to a transfer containing a reserved power to alter or revoke the right of possession or enjoyment; (4) property subject to a transfer containing a reservation or right to income or the right to control the enjoyment thereof during the decedent's lifetime or a period fixed with reference thereto; and (5) property representing the proceeds of insurance payable to a specific beneficiary. *Section* 315 (*a*) provides that the lien therein described shall attach to the decedent's "gross estate" which as is pointed out below the Internal Revenue Code nowhere defines (see pages 49 to 53). *Section* 315 (*b*) extends that lien to all of the property falling into the various categories mentioned above with one exception. That exception embraces property held by a decedent and another as joint tenants or as tenants by the entirety. At another point in this brief (pages 49 to 53) that omission is urged upon this court as indicating that Congress did not intend that the lien for Federal Estate Taxes should extend to jointly held and entireties property. That la-

cuna in *Section* 315 (*b*) has an additional and deeper significance, for if the construction of that section approved by the court below is to prevail, both that section and *Section* 315 (*a*) offend the Fifth Amendment.

Section 315 (*b*) extends the lien described *Section* 315 (*a*) to the property which the former enumerates but limits the operation of that lien with respect to transferees of such property by specifically providing in the following language—

> "• • • . Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth."

that the lien shall not be valid as against bona fide purchasers from such transferees. This provision brings into sharp focus the arbitrary and capricious character of the unequal treatment which *Section* 315 (*a*), as construed by the court below, accords to an innocent purchaser from a surviving tenant of an estate by the entirety. If A transfers property to B reserving to himself the income for life and B after A's death sells the property to C, an innocent purchaser, C takes the property free of the lien to which it was subject in B's hands. If, however, A and B had been joint tenants or tenants by the entirety and B, after A's death, sells the property to C, the latter's good faith is no protection to him. He finds that property which he innocently acquired can be wrested from him to pay A's taxes arising

out of a transaction to which he, C, is a complete stranger. This court has frequently called attention to the fact that the Fifth Amendment unlike the Fourteenth contains no provision prohibiting the denial of equal protection of the laws. *LaBelle Iron Works v. United States,* 256 U. S. 377; *Brushaber v. Union Pacific R. R. Co.,* 240 U. S. 1; *Steward Machine Co. v. Davis,* 301 U. S. 548; *Currin v. Wallace,* 306 U. S. 1; *Sunshine Anthracite Coal Co. v. Adkins,* 310 U. S. 381. It has never denied, however, that discrimination may be so great and unequal treatment so unjustifiable as to constitute arbitrary and capricious action amounting to confiscation which this Court has recognized as offensive to the Fifth Amendment. *Nichols v. Coolidge,* 274 U. S. 531. See also *Brushaber v. Union Pacific R. R. Co.,* 240 U. S. 1; *Barclay & Co. v. Edwards,* 267 U. S. 442. This Court will search in vain, as have we, for any reason founded on logic or policy which even faintly suggests a ground for denying to a bona fide purchaser from a surviving tenant by the entirety the protection which is so freely accorded to the innocent purchasers from a donee who takes by a transfer of the type described in *Section* 315 (*b*). As interpreted by the court below, the enactment under consideration becomes the very avatar of legislative caprice, offensive to even the most elastic conscience.

This Court, through the late Justice Holmes, has chronicled its doubt as to whether transferees of the type mentioned in *Section* 315 (*b*) can constitutionally be made liable for the tax imposed on the estate of a decedent who is the source of the transferee's title. *Llewellyn v. Frick,* 268 U. S. 238, 251. That uncertainty is magnified where the person sought to be made liable for that tax is an innocent stranger who purchased in good faith from such a transferee and who has no connection with the

transaction giving rise to the tax. Perhaps it was this increased distrust as to constitutionality which was the generating source of the protection which Congress provided for bona fide purchasers from the transferees enumerated in *Section* 315 (*b*) by enacting the portion thereof quoted above. Whatever may have been the basis for the inclusion of this protective clause, it would be unthinkable to suppose Congress intended further to add to this welter of constitutional dubiety by according to one portion of a class of innocent purchasers different treatment from that given a class of such transferees, all similarly situated, whose liability for estate tax this Court has already branded as constitutionally uncertain. It is, however, unnecessary to strike down *Sections* 315 (*a*) and 315 (*b*) as violative of the Fifth Amendment. We submit that Congress intended no such arbitrary and discriminatory action as the decision of the court below attributed to the National Legislative Body by its construction of the enactment under consideration. This Court has construed and should construe the Acts of Congress to avoid, if possible, any doubt as to their constitutionality. *Panama R. R. Co. v. Johnson*, 264 U. S. 375; *Lewellyn v. Frick*, 268 U. S. 238; *Hassett v. Welch*, 303 U. S. 303. The construction of *Sections* 315 (*a*) and 315 (b) which Petitioner urges avoids possible collision between those sections and the Fundamental Law. By interpreting *Section* 315 (*a*) as imposing no lien but as merely describing certain attributes of the lien imposed by *Section* 3186, which requires notice of that lien to be filed to make the same effective against bona fide purchasers, the necessity is obviated of imputing to Congress an intent to arm Respondent with that invidious instrument—a secret lien. In addition, it places on a parity innocent purchasers from a surviving tenant of an estate by the entirety and from the transferees described in *Section*

315 (*b*). The protection of all such bona fide purchasers then rests on the requirement of filing or recording and not on the entirely fortuitous circumstance that the vendor or mortgagor acquired his title by virtue of a transfer intended to take effect in possession or enjoyment at or after death rather than as the survivor of an estate by the entirety.

We are not unmindful of the fact that the second sentence of *Section* 315 (*b*) frees from the lien for estate taxes only property "sold to a bona fide purchaser." It might conceivably be contended that Petitioner is not in a position to object to the inequality (which *Sections* 315 (*a*), as construed by the court below and 315 (*b*) create) because such inequality exists only with respect to purchasers from transferees described in the latter section, and encumbrancers not being included in the latter section are all accorded equal treatment—namely a complete lack of protection. The answer to this question is twofold. In the first place, it is difficult to believe that the word "sold" is to be construed in the narrow sense of an outright transfer of title. Cf. *United States v. Rosebush*, 45 Fed. Supp. 664 (D. C. Wis.). While this question appears never to have been passed upon by the courts, it is fair to assume that Congress intended, in view of its consistent policy of protecting both purchasers and encumbrancers (see pages 23 to 31 of this brief) that the words "sold to a bona fide purchaser" should include a mortgage to a bona fide encumbrancer. Indeed, a mortgage may be brought within the precise wording of the statute for as a matter of legal theory a mortgage has been sometimes regarded as a sale upon a condition subsequent. However, it is not necessary to

resort to such formalism for the courts have indicated that substantially similar language, namely, "a bona fide sale for an adequate and full consideration in moneys worth" used in several places in *Section* 811 *of the Internal Revenue Code* embraces transactions which are not sales in the narrow sense of that term. See *Root, et al., Executors v. United States*, 56 F. (2nd) 857 (D. C. Fla); *Estate of Warner D. Hunt v. Commissioner*, 19 B.T.A. 624 (Acq.) *Goldman, et al., Executors v. Commissioner*, 11 B. T. A. 92 (Acq.). In the second place, Petitioner is a purchaser of the property which is the subject-matter of this suit. Its initial connection with that property was as mortgagee but those mortgages were foreclosed and at the foreclosure sale Petitioner became the purchaser. The fact that the sale was upon the foreclosure of Petitioner's mortgages is immaterial, so far as the present controversy is concerned. This Court has itself said that for purposes of Federal Taxation such a sale is to be treated as any other sale. *Helvering v. Hammel*, 311 U. S. 504.

The constitutionality of *Section* 315 (*a*) has never been adequately explored. The question was not raised in either *United States v. Security-First National Bank of Los Angeles, et al.*, 30 Fed. Supp. 113, *appeal dismissed* 113 Fed. (2nd) 491 (C.C.A. 9th), or *United States v. McGuire, et al.*, 42 Fed. Supp. 337. Indeed, the same constitutional question, as is presented in this case, could have been raised in neither. In the former case the mortgagor was the estate, not as in the instant case, a transferee of the same general class as those described in *Section* 315 (*b*). The same is true of the latter case for there the encumbrancer was an unsecured creditor of

the decedent at the time of his death whose lien arose by virtue of the reduction of that claim to judgment subsequent to death but prior to the filing by the Government of notice of its lien. In *United States v. Snyder*, 149 U. S. 210 no question of constitutionality was presented. That case dealt solely with the question of the relative priority of the lien imposed by *Section* 3186 (prior to its amendment to require filing or recording of notice to make it effective against bona fide purchasers) and that of a mortgage acquired in good faith and for value. This Court stated that the single question presented for its consideration was "whether the tax system of the United States is subject to the recording laws of the states" and that was all that this Court decided.

The District Court, on the constitutional issue, assumed rather than decided that *Section* 315 (*a*) given the construction which it accorded to that section, did not violate the Fifth Amendment (R. 240-243). The Circuit Court of Appeals expressly decided in favor of constitutionality but its decision is marked by almost a complete absence of any discussion of the point (R. 295). It apparently was of the opinion that the provisions of *Section* 313 *of the Revenue Act of* 1926 (*Sections* 825 (*a*) *and* 827 (*c*) *of the Internal Revenue Code*) were sufficient answer to the argument of unconstitutionality. The provisions relied upon by the Court of Appeals are substantially to the following effect: The executor may apply for a prompt determination of the amount of Estate Tax payable by the estate in his charge. Within one year from the date of such application (or if the application is made before the return is filed, then within one year from the date on which the return is filed), the Commissioner is required to determine the amount of tax. Upon the payment by

the executor of the amount of the tax so determined, the executor is released from personal liability. This payment, however, does not release any part of the gross estate from the lien for any deficiency in tax subsequently determined, except where title to such part of the gross estate has passed to a bona fide purchaser. The court below seems to have reasoned that since these provisions afforded Petitioner a procedure for protecting itself against the lien of the Government, it may not complain, not having resorted to this procedure, that its property is appropriated in satisfaction of that lien. The difficulty with this argument is that its premise is false for Petitioner could not have availed itself of these provisions even if it had desired to do so. The application for a prompt determination of the tax under *Section* 313 *of the Revenue Act of* 1926 must be made by the *executor* and by him alone. Petitioner could not, therefore, have made the application. The same was true of its mortgagor, who was not the executor of Mr. Paul's estate, but the surviving tenant of an estate in specific property which she and John P. Paul held as tenants by the entirety. It is, therefore difficult to conceive how either Petitioner or its mortgagor would have been able to avail themselves of the suggested panacea. Conceivably a surviving joint tenant or the survivor of a tenancy of the entireties might be able to prevail on an executor to make application for the determination. There is nothing certain about this procedure, however, for there is no way in which the executor can be compelled to make the required application. It is not difficult to conceive of a case where a hostile or indifferent executor would ignore such a request on the part of a surviving tenant. It is likewise not difficult to envisage a situation where a decedent would have no estate subject to administration

and hence no executor could be appointed. Under such circumstances a surviving tenant would be helpless. A protection dependent on so many contingencies is illusory and an illusory protection is hardly an adequate substitute for the aegis which *Section* 315 (*b*) affords to innocent purchasers from other transferees of a decedent.

Quite apart from what has been said in the preceding paragraph, it is extremely doubtful whether an application under *Section* 313 *of the Revenue Act of* 1926 would have accorded effective protection to Petitioner. That section discharges the executor from personal liability. However, the complementary provisions of that section do not operate to release any part of the gross estate from the lien unless (1) "the title to such part of the gross estate has passed" and (2) "to a bona fide purchaser for value." Respondent concedes, and there can be no doubt, that Petitioner as a mortgagee without notice is a bona fide purchaser. However, under the laws of the State of Michigan it is well settled that no title passes to a mortgagee. See *Ladue v. The Detroit & Milwaukee R. R. Co.*, 13 Mich. 280, 394; *Dawson v. Peter*, 119 Mich. 274, 280, 77 N. W. 997; *Equitable Trust Co. v. Milton Realty Co.*, 263 Mich. 673, 676, 249 N. W. 30. This argument cannot be lightly dismissed on the ground that the statutory language may be broadly construed. Congress in enacting *Section* 313 did not phrase this release provision in the elastic language of sale or transfer. Instead it expressly made the divestiture of the lien dependent on whether "title has passed." Respondent may protest that it would never have taken such a position. The present case, however, is proof that Respondent neglects no contention, however inequitable, in seeking to enforce its lien for taxes.

III. The lien herein sought to be foreclosed does not in any event extend to any of the property herein involved in which John P. Paul at the time of his death possessed an interest as a tenant by the entirety.

Even though this Court should sustain the conclusion that Respondent's lien for Estate Taxes is valid against bona fide purchasers and encumbrancers still that lien would be enforceable only against such of the property as was not held by John P. Paul and his wife as tenants by the entirety at the time of the former's death.

Property passing to a surviving tenant of an estate by the entirety is not part of "the gross estate" of a decedent as that term is used in *Section* 315 (*a*). The statutes of the United States nowhere define the term "gross estate." *Section* 302 *of the Revenue Act of* 1926, *as amended* (*Section* 811 *of the Internal Revenue Code*) dealing with the concept of a decedent's gross estate does not attempt to define that concept. It simply provides that "the *value* of the gross estate of the decedent shall be determined by including the *value* at the time of" the decedent's death "of all property, real or personal, tangible or intangible, wheresoever situated, except real property situated outside of the United States, to the extent of the interest therein of the decedent at the time of his death." That section then proceeds to enumerate other property which does not form a part of a decedent's estate for purposes of administration, the value of which is included in determining the gross amount upon which a tax is payable. Property of this latter class embraces property in which a decedent at the time of his death had an interest as a tenant in the estate by the entirety. Except for specific provision (of

Section 302 *of the Revenue Act of* 1926, *as amended,* (and its predecessors) requiring the inclusion (in computing the value of a decedent's gross estate) of the value of the property therein described which is not subject to administration, the value of such property would not be includable even under the broad language of *Section* 302 (*a*) *of the Revenue Act of* 1926 (*Section* 811 (*a*) *of the Internal Revenue Code*). See *Helvering v. Safe Deposit & Trust Co.*,..... *U.S.*..... 62 *S. Ct.* 925 (*decided April* 13, 1942); *Porter v. Commissioner,* 288 U. S. 436; *Davis v. United States,* 27 *Fed. Supp.* 698; *Estate of Gertrude L. Royce v. Commissioner,* 46 *B.T.A. No.* 147. The words "gross estate" have no inherent significance broad enough to include the interest of a decedent in property held by him and his surviving spouse as tenants by the entirety or in any property not subject to administration. The word "estate" clearly connotes only property subject to administration and the word "gross" simply serves to indicate that the estate without deduction for claims which have not become a lien against specific property at the date of a decedent's death is intended. The words "gross estate" as used in *Section* 315 (*a*) must have been intended only to embrace property which is taxable under *Section* 302 (*a*) *of the Revenue Act of* 1926. Congress was fully cognizant of that inherent limitation of those words for had they been broad enough to encompass taxable property which is not subject to administration, *Section* 315 (*b*) would have been wasted legislative effort. This is made abundantly clear by the fact that as Congress amended *Section* 302 *of the Revenue Act of* 1926 (and its predecessors) to provide for the inclusion of the value of different types of property, not subject to administration, in the value of a decedent's gross estate, it amended *Section* 315 (*b*) (and its

predecessors) to extend the lien to such newly added property. See *Section* 402 (*f*) *of the Revenue Act of* 1918, taxing the value of the proceeds of insurance in excess of $40,000 payable to a specific beneficiary and *Section* 409 *of the Revenue Act of* 1918 extending the lien for the tax to such proceeds and *Section* 803 (*a*) *of the Revenue Act of* 1932 amending *Section* 302 (*a*) to tax transfers under which the grantor reserved the income for life and *Section* 803 (*b*) *of the Revenue Act of* 1932 amending *Section* 315 (*b*) to extend the lien to such enwly included property. This legislative history is significant in determining the property to which the lien for the tax extends. *John Hancock Mutual Life Insurance Co. v. Helvering*, 128 Fed. (2nd) 745 (App. D.C.).

The lien referred to in *Section* 315 (*a*) extends to the decedent's "gross estate." Yet Congress deemed it essential to provide specifically and in clear and unmistakable terms that such lien should extend to four different types of property, the value of which is included in the value of decedent's gross estate but is not subject to administration. (See pages 40 to 43 of this brief). The attributes of entireties and jointly held property are precisely the same as those of property described in *Section* 315 (*b*). The only ground on which can be predicated the failure of Congress specifically to describe jointly held property and property held in an estate by the entirety in *Section* 315 (*b*) is that Congress did not intend the lien referred to in *Section* 315 (*a*) to attach to such property. That the exclusion of entireties property from *Section* 315 (*b*) is not accidental is attested by the fact that that section does not extend to other taxable property not subject to administration, e. g. dower and curtesy interests and property passing under a general power of appointment. However, whether this omission was inten-

tional or unintentional, we need not inquire. The important thing is that Congress did not subject property of this type to a lien, and because of that failure, no lien attaches to such property. It is well settled doctrine that the legislative intent to subject property to a lien for taxes must clearly appear and that such a lien will neither be created by implication nor enlarged by construction. *Andrew v. Munn*, 205 Iowa 723, 218 N. W. 526; *Little River Drainage District v. Houck*, 206 Mo. App. 283, 226 S. W. 72; *Archibald v. Maurath*, 92 N. J. Eq. 357, 113 A. 6.

The Circuit Court disposed summarily of the argument under this head with the citation of *Goodenough v. Commissioner*, 83 F. (2nd) 389 (C. C. A. 6th); *Robinson v. Commissioner*, 63 F. (2nd) 652 (C. C. A. 6th). Neither of these cases deal remotely with the problem here under consideration. They deal solely with the question of whether the value of entirety property is included in the value of decedent's gross estate. The question of whether such property is subject to a lien for estate taxes was neither presented nor decided in either case.

CONCLUSION

To sustain the decision of the court below is to perpetuate a doctrine which bristles with inequity. For Petitioner it means a loss to the extent of the tax, plus interest, payable by another, in a transaction to which it was a stranger. If Petitioner pays the tax to protect the mortgaged property which it acquired upon foreclosure, it will be poorer to the extent of its payment—an additional payment for which it never bargained. If it is unable to pay the tax, it may lose its entire investment which is many times the amount of the tax. What

is more significant, however, is that for estates generally it will mean an absolute inability to secure loans at a time when mortgage money is a vital necessity—to pay debts, taxes and other expenses incident to administration. No lender will be willing to assume for ten years the risk that his property may be confiscated to satisfy the secret lien of the taxing sovereign which may be asserted long after all liability for estate tax has apparently been finally settled. The instant case eloquently attests the fact that such a risk is a real threat during every moment of the ten-year period for here the lien was asserted just one day short of the tenth anniversary of John P. Paul's death. For Respondent it will be a Pyrrhic Victory. It will have collected the tax in the instant case but for this small gain it will sacrifice liquidity in countless estates yet to be taxed.

If Respondent prevails it will mean that every lender who advanced money on, or purchased, property which formed a part of the estate of a decedent who died within the last ten years will be faced with having his security or his purchase wrested from him to satisfy estate taxes as yet unassessed, payable by the estate of an individual with whom he has had no contact whatsoever. No amount of good faith will protect him. Nor can he console himself if the property on which he has a lien, or which he purchased consists of negotiable securities. If the doctrine of the Court below is sustained real and personal property, negotiable securities and even money are equally vulnerable.

The instant case involves an incumbrancer whose mortgagor is a surviving tenant of an estate by the entirety. The next may involve the mortgagee or purchaser of property which has passed through the hands of numerous bona fide purchasers. Under the doctrine of

the court below the lien of such mortgagee or the title of such purchaser must yield precedence to Respondent's lien. This is true even though, as in the instant case, the full amount of the tax has apparently been paid and the additional tax is not asserted until a succession of bona fide purchasers have bought and sold on the basis of a perfect record title. All this means nothing for Respondent may wait, as it did in the case at bar, until the hands of the clock are poised to strike the hour which marks the end of the decade of the lien's existence with complete assurance of being able to wrest the property, whether it be real estate or negotiable securities, from its innocent and bewildered possessor. If the decision of the court below is sustained, Respondent's lien indeed becomes the sword of Damocles but without even the saving grace of the restraining hair.

No amount of investigation can dispel the cloud of uncertainty in which the Court of Appeals' decision wraps all titles. In the case of securities, such as stocks and bonds, it would be virtually impossible even to ascertain whether title was traceable to the estate of a decedent who died within ten years of their acquisition. The evils implicit in such a doctrine were recognized by Congress and it aimed its shaft at those vices when it enacted *Section* 401 *of the Revenue Act of* 1939. (See pages 24 and 27 of this brief). The decision by the court below atrophys that effort and again clogs the channels of trade.

Where the lien for estate taxes involves real property, the abstract of title, on the basis of which title opinions are given and on the basis of which transactions running annually into the billions are consummated, is next to useless. The abstract would disclose that the estate of a

decedent was the source of title and nothing more. It would not disclose the extent of the decedent's taxable estate, whether a return was filed, whether a tax was paid, or any of the essential facts. Even if a purchaser were to examine the inventory of the decedent's estate and that inventory disclosed a taxable estate having a value less than the specific exemption, he could still not safely purchase the property or lend on it as security. Such an inventory would not disclose jointly held or entireties property, gifts in contemplation of death, gifts intended to take effect in possession or in enjoyment at or after death, *inter vivos* transfers subject to a reserved power to alter the right of possession or enjoyment, property passing under a general power of appointment, interests of dower and curtesy or insurance payable to specific beneficiaries. The investigation necessary to determine the existence of such property with sufficient certainty to satisfy a careful title examiner would require a long and arduous search. Even after such a search the giving of a title opinion would be fraught with considerable hazard since one could never be quite certain that all of the necessary facts had been ascertained.

There is an utter lack of realism in the suggestion of the court below that *Section* 313 (*a*) *of the Internal Revenue Act of* 1926, *Section* 825 (*a*) *of the Internal Revenue Code* (which provides a limited protection for bona fide purchasers and incumbrancers who become such after assessment is made as a result of a request pursuant to that section), provides a solution to the dilemma with which that court's decision confronts borrowers and lenders and sellers and purchasers. If a request for an assessment pursuant to the section is made, the Commission-

er is required to make an assessment within one year from the receipt of the request, *if a return has been filed.* If the request is made before the return is filed, the Commissioner is required to make the assessment within one year from the time the return is filed. The Estate Tax Return must be filed and the tax paid within fifteen months after the date of the decedent's death. The mounting Estate Tax rates of the past several years and the future increases in prospect due to the exigencies of the present World War make it a virtual certainty that few estates will escape the necessity of borrowing on the security of or selling a portion of the property comprising the estate to pay whatever taxes may be due. If the decision of the court below is correct, a prospective purchaser or lender cannot safely consummate his purchase or loan until an assessment pursuant to *Section* 313 has been made. This means that in order to be sure of having funds with which to pay the tax on the due date, a return must be prepared and filed and an application for an assessment pursuant to *Section* 313 must be made not later than three months after the decedent's death. In any case where the estate is sizable, this is a formidable task. In many cases it would be virtually impossible.

However, the difficulty does not end here. *Section* 811 (*j*) *of the Internal Revenue Code* permits the executor of a decedent's estate to value the gross estate for Estate Tax purposes as of a date one year after the decedent's death instead as of the date of death. The right to select the optional value is extremely important and unless this right may be exercised the tax in many cases would be more than the value of the estate. This right can be exercised only by an election made by

the executor in the Estate Tax Return. If the executor is required to borrow on the security of or sell property comprising the estate to pay the tax, he must forego the right of optional valuation in order to pay the tax on time. This is true because to be sure that an assessment will be made under *Section* 313 in time to permit him to consummate a loan or sale in time to pay the tax fifteen months after the decedent's death, he is required to file both a return and a request for an assessment pursuant to that section not less than three months after the decedent's death. If the executor wishes to avail himself of the right of optional valuation, it is a manifest impossibility to file a return until one year after death. In this event, even though a request for an assessment pursuant to *Section* 313 has been previously made, the Commissioner has one year from the date of the filing of the return within which to make the assessment. The executor, if he is forced to rely on the provisions of *Section* 313 is thus in this position: If he would be sure of paying the tax on the due date, he must forego the right of selecting the optional valuation date and perform the difficult, if not virtually impossible, task of preparing a return within three months after the decedent's death. On the other hand, if he wishes to avail himself of the privilege of optional valuation, he is in the unpleasant position of having to default in the payment of the tax. It is, of course, true that the executor may be able to prevail upon the Commissioner of Internal Revenue to grant him an extension of time within which to pay the tax. See *Section* 822(*a*)(2) *of the Internal Revenue Code.* If the executor is successful, he is then faced with the prospect of having to furnish security for the payment of the unpaid tax, and in addition is required to pay interest thereon at the rate of four per cent (4%) per annum.

Sections 822(*a*)(2) *and* 890(*a*) *of the Internal Revenue Code.* Thus, even though the executor may think it advisable to sell rather than to borrow, he is forced in effect to borrow and at interest rates and on terms which may be considerably more onerous than could have been obtained from a private lender.

Even if an executor is willing to forego the right of optional valuation and is able to file an Estate Tax Return and a request for an assessment pursuant to *Section* 313 promptly after the decedent's death, he is still beset with problems. Loans and sales can be made only on the basis of conditions which exist at a given time. Yet a prospective purchaser or lender must insist for his protection, if the decision of the court below is correct, on compliance with *Section* 313. In an estate of any size, the investigation which the Commissioner would be required to make, might and probably would consume the greater part of the allotted year. Few prospective purchasers or lenders in a constantly changing world would be willing to keep their commitments open until the Commissioner had acted. Consider, for example, the difficulty (if not the impossibility) of trying to market a block of corporate stock, the market price of which may change hourly. By the time the Commissioner has accomplished his investigation an advantageous sale may no longer be possible. Indeed, the stock which might have been sold for more than enough to pay the entire tax may have become completely unmarketable.

Respondent does not need the all embracing protection which the decision of the court below accords it. It is absurd to suggest that but for this protection dishonest taxpayers could forestall collection by fraudulent sales and mortgages. Such purchasers and encumbrancers

would not be entitled to protection either because of their guilty knowledge or because they parted with no value. Fraud is hardly so rampant as to justify the infliction of such incalculable hardship on the many innocent vendees and lienees who will be affected. Respondent will sustain no injury if the doctrine of the court below is rejected for the proceeds of the mortgage or sale presumably become immediately subject to the lien. In fact Respondent's position may be improved since the proceeds will be liquid while the property sold or mortgaged (such as land) may not.

The logical implications of the decision of the court below produce results which verge on the fantastic. If that decision is correct the property on which Petitioner took a mortgage and of which it later became Purchaser at the foreclosure sale, is subject to respondent's lien. What, however, of the proceeds which Petitioner's mortgagor received as a result of the mortgage? There is no provision of law which expressly subjects those proceeds to the lien as there is in the case of other types of property, the value of which is included in the value of the decedent's gross estate for estate tax purposes, but which is not part of his estate for purposes of administration. *See Section* 827 (*b*) *of the Internal Revenue Code.* If this is correct, then the Petitioner's position is worse than that of its mortgagor, for the property on which it took a mortgage is subject to the lien, but the proceeds of that mortgage are not. Should these proceeds be invested in property which is later sold to a bona fide purchaser it would follow that since the proceeds of the mortgage are not subject to the lien the property in which they are invested is also free of lien. Thus, because Petitioner happened to be the first bona

fide purchaser, instead of the second, it finds itself without protection. Here is arbitrary and capricious treatment incarnate. If it be assumed, on the other hand, that the proceeds of the mortgage which Petitioner made became subject to a like lien which petitioner finds asserted against the property which it acquired in good faith, it should follow that any property into which those proceeds are subsequently converted is also subject to the lien. On this theory Respondent's position improves with each successive purchase and sale by the original holder of the property liable for the tax, for each adds to the pool of property against which Respondent can enforce its lien. Assume that instead of having taken a mortgage on property which belonged to a surviving tenant of an estate by the entirety, Petitioner had loaned its money on the security of property which its lienor had acquired by a transfer intended to take effect in possession or enjoyment at or after death. Petitioner would then have been protected under the provisions of *Section 827 (b) of the Internal Revenue Code* but the proceeds of the loan are subject to the lien. If those proceeds are invested in property, does that property become subject to the lien which attached to the proceeds used in its acquisition? Presumably it does, and thus in this instance the second bona fide purchaser is subject to the same misfortune which would have befallen the first had his transferor acquired the property from a surviving tenant of an estate by the entirety.

Only a few of the astounding results which flow from the decision of the court below are catalogued in the preceding paragraph. Others are not difficult to conceive. How, for example, does the lien, under the doctrine of the court below, affect a bona fide purchaser of property which a decedent did not own at the time of his death,

but which subsequently comes into the hands of the executor as a result of a purchase, partly with the proceeds of the sale of property which the decedent owned at the time of his death, partly with income derived from property purchased with cash which the decedent owned at the time of his death, and partly with money derived from a contingent remainder which the decedent owned at the time of his death, but which did not ripen into possession until subsequent to his demise. He who can solve the riddles which the decision of the court below poses, must indeed be capable of a ratiocination of the irrational.

A good government is one which not only insures fair dealing between man and man but which also observes the principles of fair play in its dealings with its citizens. The three branches of the Government of the United States have scrupulously adhered to these precepts in all fields of activity but nowhere more meticulously than in the field of taxation. That being so, is it fair to assume that Congress deviated from this policy by prescribing, as the procedure for the collection of Estate Taxes, a secret lien calculated to trap the unwary? The question admits of but one answer—the assumption is unthinkable. The rejection of that assumption means the reversal of the decision of the court below. The construction of *Section* 315 (*a*) urged by Petitioner is based upon the fundamental principle that Congress intended to incorporate in the system which it enacted for the collection of Estate Taxes, the principles of fairness on which all action of a Democratic Government should proceed. Every compelling reason of policy, fairness and justice counsel this Court not to allow *Section* 315 (*a*) to continue, as it is under the decision of the court below, "an unfocused threat" to the property of countless innocent persons throughout the United States.

We respectfully submit that this Court should reverse the decision of the Circuit Court of Appeals and should direct the entry of a decree providing that the lien of the Respondent is subordinate and inferior to the title of Petitioner with respect to all of the property herein involved.

Respectfully submitted,

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APPENDIX

Section 3186 *of the Revised Statutes of the United States* (*Act of July* 13, 1866, *c.* 184, *Sec.* 9, 14 *Stat.* 107 *as revised and amended by an Act of March* 1, 1879, *c.* 125, *Sec.* 3, 20 *Stat.* 331) *as amended by Act* 451, *March* 4, 1913 (*c.* 166, 37 *Stat.* 1016) *by an Act of February* 26, 1925, *c.* 344, 43 *Stat.* 994, *by Section* 613 *of the Revenue Act of* 1928, *by Section* 509 *of the Revenue Act of* 1934 *and Section* 401 *of the Revenue Act of* 1939, *now known as Sections* 3670 *to* 3677 *of the Internal Revenue Code,* as amended, reads as follows:

"§3670. Property subject to lien

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

"§3671. Period of lien

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

"§3672. Validity Against Mortgagees, Pledgees, Purchasers, and Judgment Creditors

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee,

pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) (1) *Exception in Case of Securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner provided in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase, such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

"(2) *Definition of Security.*—As used in this subsection the term 'security' means any bond, debenture, note, or certificate, or other evidence of

indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

"(3) *Applicability of Subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose."

"§3673. Release of lien

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) *Liability Satisfied or Unenforceable.* The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) *Bond Accepted.* There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations."

"§3674. Partial Discharge of Property

(a) *Property Double the Amount of the Liability.* Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) *Part Payment.* Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States."

"§3675. Effects of certificates of release or Partial Discharge

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished."

"§3676. Single Bond Covering Release of Lien and Payment of Income Tax Deficiency

The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of a single bond complying both with the re-

quirements of Section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of subsection (b) of section 3673."

"§3677. Extended Application for Provisions Relating to Release or Partial Discharge

Sections 3673, 3674, 3675, and 3676 shall apply to a lien in respect of any internal revenue tax, whether or not the lien is imposed by this subchapter."

Section 315 *of the Revenue Act of* 1926, *as amended by Section* 613 (*b*) *of the Revenue Act of* 1928 *and by Sections* 803 *and* 809 *of the Revenue Act of* 1932, *now known as Section* 827 *of the Internal Revenue Code* reads as follows:

"§827. Lien for Tax

(a) *Upon gross estate.* Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) *Upon Property of Transferee.* If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession and enjoyment of, or the right to the income from, the property, or (B) the right either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the

tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(c) *Continuance after Discharge of Executor.* The provisions of section 825 shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees."

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No. 156

In the Supreme Court of the United States

OCTOBER TERM, 1942

THE DETROIT BANK, FORMERLY THE DETROIT SAVINGS BANK, A MICHIGAN BANKING CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States District Court (R. 229–243) is reported in 41 F. Supp. 41. The opinion of the United States Circuit Court of Appeals (R. 292–296) is reported in 127 F. (2d) 64.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 8, 1942 (R. 290). The petition for a writ of certiorari was filed on June 17,

1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Government's lien for federal estate taxes, although unrecorded, is superior to the lien of a mortgagee who acquired the mortgage in good faith and without knowledge of the lien. This depends upon whether the lien for federal estate taxes provided under Section 315 (a) of the Revenue Act of 1926 is subject to the provisions of Section 3186 of the Revised Statutes, as amended.

2. Whether Section 315 (a) of the Revenue Act of 1926 as applied to the facts of this case violates the Fifth Amendment to the Constitution.

STATUTES INVOLVED

The statutes involved may be found in the Appendix, *infra,* pp. 10–12.

STATEMENT

The facts, as stipulated (R. 100–130–f), and as found by the District Court (R. 229–240), may be summarized as follows:

John P. Paul, a resident of Detroit, Michigan, died on May 5, 1926 (R. 229). At the time of his death the decedent and his wife, as tenants by the entirety, owned certain real estate (R. 230–231).

In July 1927, the decedent's widow filed a federal estate tax return and paid the tax shown on the

return (R. 229). In March 1930, the Commissioner of Internal Revenue notified the widow of the determination of a proposed deficiency in federal estate taxes in the amount of about $23,000 (R. 229–230). In May 1930, the widow filed a petition for redetermination of the deficiency with the United States Board of Tax Appeals. In November 1932, the Board of Tax Appeals entered an order in that proceeding approving the Commissioner's determination of the deficiency, from which no appeal was taken. On February 19, 1933, the Commissioner of Internal Revenue duly assessed against the estate of the decedent a deficiency in federal estate taxes in the principal amount of about $23,000, together with interest of about $8,000. No part of this deficiency has ever been paid (R. 230).

Some of the real property in the decedent's estate was mortgaged by the widow or by her children, who succeeded her in title, to the Detroit Bank, petitioner herein (R. 235–238). There was a default in the payment of the obligations secured by the mortgages; the petitioner foreclosed the mortgages and bid the property in at foreclosure sale (R. 235–236).

On May 4, 1936, the United States instituted this action to foreclose its lien upon the various parcels of real estate held by the decedent and his wife, as tenants by the entirety, at the time of his death, for the unpaid federal estate taxes and in-

terest (R. 1–47). The petitioner, as mortgagee, was joined among others as party defendant (R. 1). The District Court determined that the lien of the United States for the unpaid federal estate taxes and interest was superior to the liens represented by the mortgages, including those of petitioner, which were executed subsequent to the date of the death of the decedent (R. 241). Accordingly, the District Court ordered the sale of all parcels of real estate except those mortgaged prior to the date of the death of the decedent (R. 247–256). From this order the petitioner, together with other parties defendant, appealed to the Court below which affirmed the decision of the District Court.

ARGUMENT

1. Petitioner relies upon Section 3186 of the Revised Statutes (Appendix, *infra,* pp. 10–11) which deals with tax liens generally and which requires the Government's lien to be recorded in order to be valid against a mortgagee, etc. The court below, however, correctly held that Section 315 (a) of the Revenue Act of 1926 (Appendix, *infra,* p. 12), which deals specifically with liens for federal estate taxes, is independent of Section 3186; and since the provisions of Section 315 (a) do not require recordation, the Government's lien for estate taxes herein took priority over subsequent mortgage liens which were recorded without notice of the Government's lien. The same conclusion has been reached

in *United States* v. *Security-First Nat. Bank,* 30 F. Supp. 113 (S. D. Cal.), and *United States* v. *McGuire,* 42 F. Supp. 337 (N. J.),[1] and there is no conflict of decisions.

Section 315 (a) of the Revenue Act of 1926 had its genesis in Section 209 of the Revenue Act of 1916, c. 463, 39 Stat. 756, the first federal estate tax law. It provides that unless the tax (the federal estate tax) is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent. The only lien to which the statute refers is one for federal estate taxes. On the other hand, Section 3186 of the Revised Statutes deals with liens generally. The court below based its decision (R. 295) upon the familiar rule of statutory construction that special provisions will prevail over general ones. *Missouri* v. *Ross,* 299 U. S. 72, 76; *Baltimore Nat. Bank* v. *Tax Comm'n,* 297 U. S. 209, 215; *Ginsberg & Sons* v. *Popkin,* 285 U. S. 204, 208; *New York Life Ins. Co.* v. *Bowers,* 283 U. S. 242, 246–247; *Kepner* v. *United States,* 195 U. S. 100, 125; *McKee* v. *United States,* 164 U. S. 287, 294; *United States* v. *Chase,* 135 U. S. 255, 260; *Townsend* v. *Little,* 109 U. S. 504, 512.

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[1] Apparently no appeal was taken in the *Security-First Nat. Bank* case. Shepherd's Citations show that the appeal was dismissed at 113 F. (2d) 491, but that citation is erroneous because it relates to a different case. Our records show that no appeal was taken. Judgment has not yet been entered in the *McGuire* case so that the time within which to take an appeal has not expired.

Section 3186, Revised Statutes, was originally enacted in 1866, fifty years before the first federal estate tax, and there was obviously no Congressional intent to make it applicable to estate taxes. Moreover, its language is inappropriate to federal estate taxes. As amended, it reads in part as follows:

> That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: * * *

The statute refers to taxes due from a living person because under its terms the lien does not arise until the person liable to pay the tax refuses to pay upon demand. The lien under Section 3186 does not arise until the assessment list is received by the Collector; whereas the law is clear that a lien for federal estate taxes arises on the death of the decedent. *Rosenberg* v. *McLaughlin,* 66 F. (2d) 271 (C. C. A. 9th); *United States* v. *Security-First Nat. Bank, supra; United States* v. *Cruikshank,* 48 F. (2d) 352 (S. D. N. Y.); *United States* v. *Ayer,* 12 F. (2d) 194 (C. C. A. 1st).

The difficulties of protecting the Government's lien for estate taxes, if it must be recorded, are exemplified by the facts of this case. The decedent

died on May 5, 1926. His widow filed a federal estate tax return on July 5, 1927 (R. 229). On March 14, 1930, the Commissioner of Internal Revenue notified the decedent's widow of the determination of a proposed deficiency in federal estate taxes in the sum of about $23,000 (R. 229–230). An appeal was taken from the notice of deficiency by the widow to the United States Board of Tax Appeals on May 10, 1930 (R. 230). Under Section 308 (a) of the Revenue Act of 1926 the Commissioner was precluded from making an assessment until the decision of the Board of Tax Appeals became final which was about February 19, 1933. On the latter date an assessment was made for a deficiency of about $23,000 and for interest of about $8,000 (R. 103).

Therefore, under Section 3186 no lien would have arisen until the assessment list was sent to the Collector which would have been subsequent to February 19, 1933, almost seven years after the decedent died. In the meantime purchasers, mortgagees, or judgment creditors may have acquired rights which, under Section 3186, would prevail over the United States because the lien did not arise and could not be recorded prior to that time. This construction of Section 3186 would not only jeopardize the claim of the United States for many years, but it would also conflict with those decisions which hold that the lien for estate taxes arises at the time of death.

It may be pointed out further that the scope of the two sections, with respect to the property covered, is not the same. Section 3186 provides that "the amount shall be a lien * * * upon *all* property and rights to property belonging to such person." [Italics supplied.] Section 315 (a), on the other hand, divests part of the estate of the lien and provides that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court of competent jurisdiction shall be relieved of the lien.

The fact that Congress enacted a special provision in regard to liens for federal estate taxes, which differs from the general provision in regard to liens, is not unusual. Section 2800 of the Internal Revenue Code (U. S. C., Title 26, Sec. 2800) provides that the tax on distilled spirits shall be a lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the land on which the distillery is located and on any building thereon from the time the spirits are in existence as such until the tax is paid. No court has held that the lien for taxes on distilled spirits must be recorded in order to be valid against bona fide purchasers or mortgagees without notice. Cf. *Blacklock* v. *United States,* 208 U. S. 75.

2. The petitioner also argues that if Section 315 (a) is construed as imposing a lien which is effective against bona fide purchasers and mortgagees without the necessity of recording the lien, it vio-

lates the Fifth Amendment to the Constitution (Br. 39–49). The contention is without substance. This Court has already sustained an unrecorded federal tax lien even where local law required recording. *United States* v. *Snyder,* 149 U. S. 210. In any event the statute is not arbitrary or capricious; when petitioner acquired the various mortgages after decedent's death it should have been put on notice of his connection with the property and of the fact that the property was of a class to which a lien could attach for federal estate taxes. The dilemma of a lender who has made a loan upon such property without satisfying himself that the taxes have been paid can hardly render the reasonable provisions of the statute arbitrary or capricious. Cf. *Fox v. Seal,* 22 Wall. 424, 438–439.

CONCLUSION

The decision of the court below is correct and there is no conflict of decisions. The petition for certiorari should be denied.

Respectfully submitted.

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SAMUEL O. CLARK, Jr.,
Assistant Attorney General.
SEWALL KEY,
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Special Assistants to the Attorney General.

JULY, 1942.

APPENDIX

Revised Statutes, as amended by the Act of February 26, 1925, c. 344, 43 Stat. 994:

SEC. 3186. That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: *Provided further,* That whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, and in the State of Louisiana in the parishes thereof, and in the States of Connecticut, Rhode Island, and Vermont in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records of the towns and cities, then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, or in the office of the registrar or recorder of deeds or town or

city clerk having custody of the land records in the States of Connecticut, Rhode Island, and Vermont of the towns or cities within which the property subject to the lien is situated.[1]

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: * * *

* * * * *

SEC. 313. * * *

(b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Com-

[1] The above represents the provisions of Section 3186 as they stood when the decedent died. They were subsequently amended by Section 613 (a) of the Revenue Act of 1928, c. 852, 45 Stat. 791, and by Section 509 of the Revenue Act of 1934, c. 277, 48 Stat. 680; and as finally amended, they were incorporated in Sections 3670–3677 of the Internal Revenue Code. None of the subsequent changes appear to affect this case.

missioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

* * * * *

SEC. 315. (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

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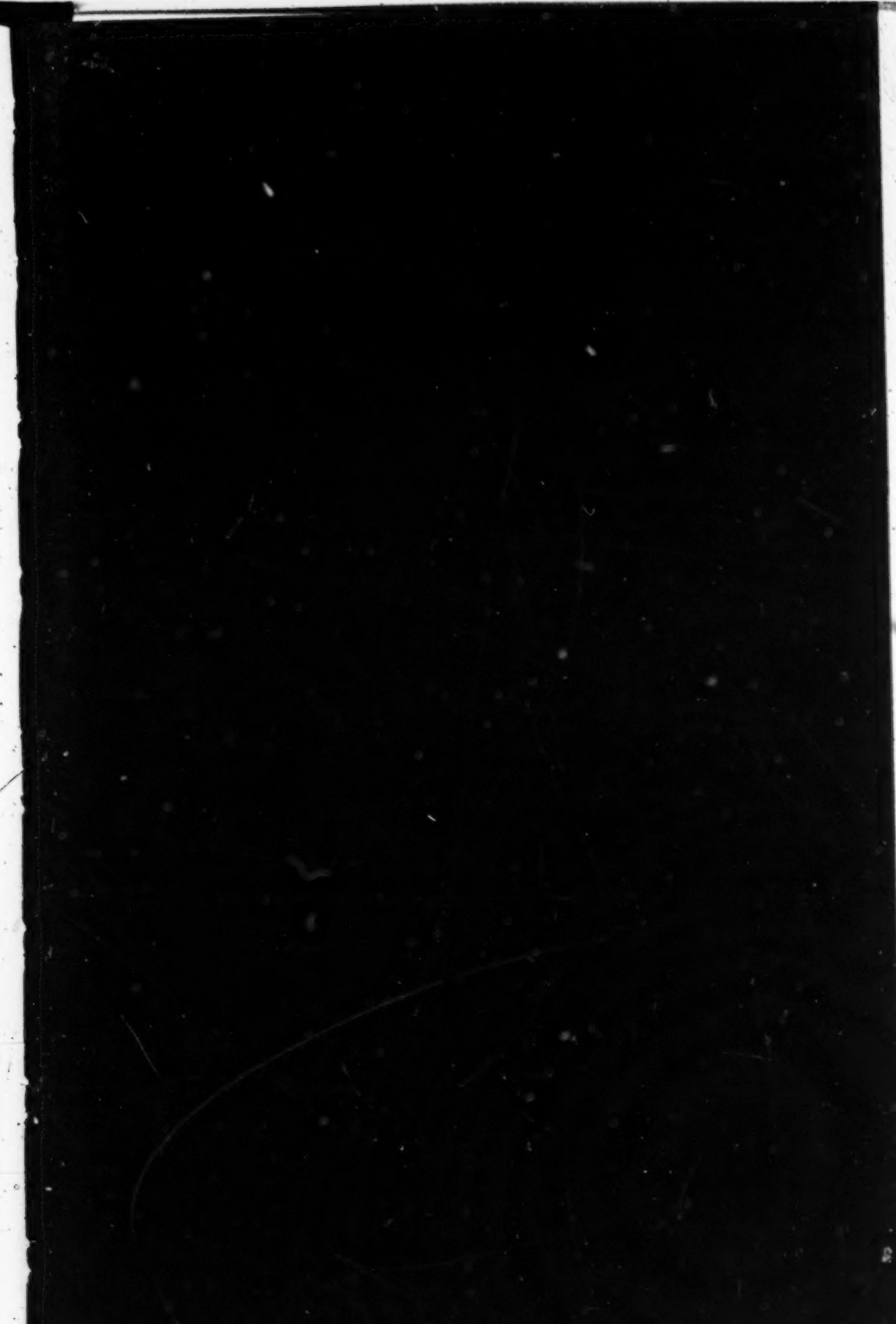

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 156

THE DETROIT BANK, FORMERLY THE DETROIT SAVINGS BANK, A MICHIGAN BANKING CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

No. 214

STATE OF MICHIGAN, JOHN J. O'HARA, AUDITOR GENERAL FOR THE STATE OF MICHIGAN, COUNTY OF WAYNE, A CORPORATE BODY POLITIC, JACOB P. SUMERACKI, TREASURER FOR THE COUNTY OF WAYNE, CITY OF DETROIT, A MUNICIPAL CORPORATION, AND ALBERT E. COBO, TREASURER OF THE CITY OF DETROIT, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court issued no opinion. Its findings of fact and conclusions of law (R. 229–243,

245) are reported at 41 F. Supp. 41. The opinion of the Circuit Court of Appeals (R. 292–296) is reported at 127 F. 2d 64.

JURISDICTION.

The judgments of the Circuit Court of Appeals were entered April 8, 1942. (R. 289–291.) Petition for a writ of certiorari was filed by The Detroit Bank on June 17, 1942. Petition for a writ of certiorari was filed by the State of Michigan, the County of Wayne, the City of Detroit and the state and local officials on July 7, 1942. Both petitions were granted on October 12, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

No. 156

1. Whether the Government's lien for federal estate taxes, established by Section 315 (a) of the Revenue Act of 1926, attaches to property owned by a decedent as one of the tenants of an estate by the entirety.

2. Whether the Government's lien for federal estate taxes, although unrecorded, is superior to the lien of a mortgagee who thereafter acquires a mortgage for value, in good faith and without actual knowledge of the prior lien. This depends upon whether the lien for federal estate taxes is independent of, or is subject to, the provisions of Section 3186 of the Revised Statutes, as amended.

3. Whether, as applied to bind subsequent mortgages, Section 315 (a) offends the Fifth Amendment.

214

Questions similar to No. 156 are raised and the following question in addition:

4. Whether the Government's lien for federal estate taxes, under the Federal Constitution, is superior to liens for unpaid state and local real estate taxes which attach subsequent to the lien for the federal tax.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutes and constitutional provisions involved are set out in the Appendix, *infra*, pp. 45–52.

STATEMENT

The material facts, which for the most part were stipulated (R. 100–130–f), were found by the District Court as follows:

John P. Paul, a resident of Detroit, Michigan, died intestate on May 5, 1926. On July 5, 1927, Lena Paul, decedent's widow, filed a federal estate tax return in the office of the Collector of Internal Revenue, Detroit, and paid the tax reflected by the return. (R. 229.) On March 14, 1930, the Commissioner of Internal Revenue notified Lena Paul of the determination of a proposed deficiency in federal estate taxes in the sum of $23,271.84. (R. 229–230.) Thereafter, Lena Paul

filed an appeal with the United States Board of Tax Appeals seeking a redetermination of the proposed deficiency. On November 4, 1932, the Board of Tax Appeals entered an order in that proceeding approving the Commissioner's determination. No appeal was taken from this decision. On February 19, 1933, pursuant to statute, the Commissioner of Internal Revenue assessed against the estate of John P. Paul a deficiency in federal estate taxes in the principal amount of $23,271.84, together with interest in the sum of $8,080.28. No part of this deficiency has been paid. (R. 230.)

At the time of his death, John P. Paul and his wife, Lena Paul, as tenants by the entirety, owned or held land contracts upon forty-two of the fifty parcels of real estate involved in this proceeding. The remaining eight parcels (numbered 40–47 in the bill of complaint) were formerly owned by John P. Paul but had been given by him to certain of his children less than two years prior to his death. These eight parcels were considered by the Commissioner of Internal Revenue and held by the Board of Tax Appeals to be a part of decedent's gross estate as property transferred in contemplation of death. (R. 230–231.)

Subsequent to decedent's death and prior to July, 1931, ten parcels of the real estate were mortgaged either by Lena Paul or by the Paul children, who held title at the time, to petitioner,

The Detroit Bank, hereinafter referred to as the Bank. (R. 235–238.) All of the parcels so mortgaged were among the forty-two which had been owned or upon which contracts had been held by John P. Paul and Lena Paul as tenants by the entirety. (R. 230–231, 236–238.) The obligations secured by these mortgages were thereafter defaulted and the properties were foreclosed and bid in by the Bank in 1934. (R. 236.) At the time the Bank loaned money upon the security of these mortgages it had no actual knowledge that the United States had or claimed to have any lien on this property; the Bank acquired the mortgages in good faith and for value. (R. 239.) Another parcel was mortgaged to a second bank in July, 1929, and this mortgage likewise was foreclosed, in March, 1936. (R. 188, 238–239.) In addition, some thirteen other parcels had been mortgaged prior to decedent's death. (R. 233–235.)

At the time of the trial of this case there were unpaid local real estate taxes due to the State of Michigan, the County of Wayne and the City of Detroit or the City of Highland Park upon some thirty-five of the fifty parcels. None of the unpaid real estate taxes was for years prior to 1929.[1] (R. 115–129, 239.)

[1] The properties upon which real estate taxes were due included a few of the parcels mortgaged prior and subsequent to John P. Paul's death. (Cf. R. 115–129 with R. 233–238.)

The estate of John P. Paul was not probated and there are no assets, other than the real estate here involved, from which the federal estate tax can be collected. (R. 239.)

Pursuant to Section 3207 of the Revised Statutes, as amended, the United States on May 4, 1936, instituted a suit in equity to foreclose its lien upon the fifty parcels of real estate for the unpaid federal estate taxes and interest. Petitioners, the Paul children[2] and all other interested persons, were joined as parties defendant. (R. 1–47.) The District Court found the facts as summarized above (R. 229–240, 245) and concluded that the lien of the United States for the unpaid federal estate taxes and interest was prior in time and superior in right to the liens of mortgages executed subsequent to the death of John P. Paul and to the liens for state, county and city taxes (R. 241). The Government conceded and the court concluded that the lien for federal estate taxes was inferior to the liens created by those mortgages executed prior to the date of the death of John P. Paul. (R. 7, 241.) While not material before this Court, the District Court also concluded that the Paul children were not purchasers for value of any of the real estate involved in this proceeding and that their interest was inferior to that of the United States. (R. 242.) In accord with these conclusions, the Dis-

[2] Lena Paul, the widow of John P. Paul, had died in 1931. (R. 229.)

trict Court ordered the sale of all of the parcels of real estate except those mortgaged prior to the death of John P. Paul. It ordered that the parcels which were not mortgaged and were subject only to the liens for taxes should be sold first and that if the amount received upon the sale of these properties was insufficient to satisfy the unpaid federal estate taxes and interest that the parcels mortgaged subsequent to the death of John P. Paul should then be sold. The court also ordered that all of the parcels sold should be sold free and clear of all encumbrances and that the proceeds should be paid into the court, the liens of the parties to attach to the proceeds in order of their priority as determined by the court. (R. 247–258.)

Thereafter the petitioners before this Court and the Paul children appealed to the Circuit Court of Appeals for the Sixth Circuit. (R. 259, 266, 269, 274, 278.) The Circuit Court of Appeals affirmed the decree of the District Court. (R. 289–291.)

SUMMARY OF ARGUMENT

I

No dispute is present concerning the determination and assessment of the tax deficiency; the controversy concerns solely the priority of the lien for federal estate taxes as against the liens asserted by the petitioners. By the terms of Section 315 (a) of the Revenue Act of 1926 a lien attached to the "gross estate" of the decedent,

including all of the real estate here involved, at the date of his death on May 5, 1926. Petitioner's claim, in No. 156, that the federal lien does not attach to tenancies by the entirety is without foundation, since such interests are expressly included in the "gross estate" as defined in Section 302. Nothing in Section 315 (b) persuades to the contrary. That subsection merely imposes a personal liability on certain classes of transferees. Accordingly, the lien of the United States attached to the fifty parcels of real estate prior in time to any of the liens asserted by the petitioners.

II

The Government's lien for federal estate taxes need not be recorded to be superior to the lien of subsequent mortgages. The lien imposed by Section 315 (a) is a lien wholly separate and apart from that imposed by Section 3186 of the Revised Statutes, as amended. This is shown by comparison of the terms of the two provisions and by their legislative history. Section 315 (a) contains no requirement that the federal lien shall be recorded and, in the absence of such a provision, no recording requirement is to be read into a federal lien statute. As the lien for federal estate taxes exists independently of Section 3186, the recording requirement in the latter section is inapplicable. Difficulties peculiar to the collection of the estate tax necessitate a more effective lien for estate taxes than for other taxes. Congress

has provided a method by which prospective purchasers of estate property and prospective lenders to estates and legatees can be protected. In any event, the circumstances under which estate taxes arise make recordation less necessary in the case of estate taxes than in the case of other taxes.

III

The lien provision is constitutional. Since the decision in *United States* v. *Snyder*, 149 U. S. 210, it has been settled that a federal tax lien need not be recorded to be valid and may not be required by force of state law to be recorded. Nor is the Fifth Amendment violated by the different treatment accorded different types of bona fide purchasers for value. This Court has repeatedly held that, unlike the Fourteenth Amendment, the Fifth Amendment does not contain an equal protection clause. But if it did there would be sufficient basis for the challenged classification, since the fact that the interest of the decedent was terminated only by his death is an ascertainable fact in the case of entirety property, whereas the difficulties of ascertaining that the decedent had any interest at the time of his death are much greater in the case of property of the character included within Section 315 (b).

IV

Finally, by force of the Federal Constitution, the State of Michigan is without authority to dis-

place the Federal lien in favor of liens of the State, the County of Wayne and the City of Detroit attaching subsequent to the date of the Federal lien. Assuming that the Michigan statutes purport either (1) to require the recording of the lien imposed by Section 315 (a) or (2) to make state liens for real estate taxes superior to federal liens, Michigan lacks power to do these things. It is settled that under the Federal Constitution a state is powerless to divest or impair the interest of the United Sates under a pre-existing lien. The United States should prevail over the State and its subdivisions regardless of whether Section 315 (a) or Section 3186 establish the lien. Taxing agencies are not the type of lienholder in whose favor recording laws are enacted and, appropriately therefore, any failure to record a federal lien under Section 3186 would not, by the terms of that section, benefit the State of Michigan and its subdivisions.

ARGUMENT

I

BY THE TERMS OF SECTION 315 (a) OF THE REVENUE ACT OF 1926, A LIEN FOR FEDERAL ESTATE TAXES ATTACHED TO THE REAL ESTATE IN QUESTION AT THE TIME OF DECEDENT'S DEATH

The correctness of the Commissioner's determination and assessment of the deficiency in federal estate taxes and interest cannot be and is not

challenged, the matter having been finally adjudicated by the Board of Tax Appeals. The sole controversy relates to the relative priority of the liens of the petitioners as against the lien asserted by the Government.

The Government's claim is bottomed upon Section 315 (a) of the Revenue Act of 1926. (Appendix, *infra*, p. 46.) This subsection provides that—

> Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

It will be noted that the "lien herein imposed" attaches to the "gross estate of the decedent". Section 302 of the Revenue Act of 1926 (Appendix, *infra*, p. 45), referring to the gross estate, provides in part as follows:

> SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death

of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *

* * * * *

(e) To the extent of the interest therein held * * * as tenants by the entirety by the decedent and spouse, * * * except such part thereof as may be shown to have originally belonged to such other person * * *

* * * * *

The "value of the gross estate", referred to in Section 302, must necessarily be measured by the gross estate and, by the subparagraphs of Section 302, above quoted, the value of the gross estate is measured upon tenancies by the entirety held by the decedent and his spouse (there being no contention that the widow originally owned any part of the real estate) and property conveyed in contemplation of death. The forty-two parcels of real estate which decedent at the time of his death owned as a tenant by the entirety and the eight parcels of real estate transferred by decedent in

contemplation of death are thus a part of the gross estate. By the terms of Section 315 (a), in turn, the lien for federal estate taxes attaches to them.

Finally, it is clear that the lien provided by Section 315 (a) attaches at the date of decedent's death. Cf. *Hertz* v. *Woodman,* 218 U. S. 205, 223. The gross estate is determined as of the date of the decedent's death and the federal estate tax itself comes into being at that time. *Ithaca Trust Co.* v. *United States,* 279 U. S. 151, 154–155; *United States* v. *Provident Trust Co.,* 291 U. S. 272, 281. "Unless the tax is sooner paid in full", as used in Section 315 (a), means that the lien shall continue for ten years after decedent's death unless there is full satisfaction of the tax prior to the end of the ten-year period. That such part of the gross estate as may be devoted to the payment of charges against the estate and expenses of administration shall be "divested" of the lien further supports the view that the lien attaches immediately upon decedent's death, without the necessity of prior assessment or demand. The lower courts have uniformly so held. *Rosenberg* v. *McLaughlin,* 66 F. 2d 271 (C. C. A. 9th); certiorari denied, 290 U. S. 696; *United States* v. *Ayer,* 12 F. 2d 194 (C. C. A. 1st); *United States* v. *Security-First Nat. Bank,* 30 F. Supp. 113 (S. D. Cal.); *United States* v. *McGuire,* 42 F.

Supp. 337 (N. J.);[3] *United States* v. *Cruikshank*, 48 F. 2d 352 (S. D. N. Y.). The lien of the United States is thus prior in time to that of any of the liens asserted by the petitioners.

The Bank's contention that properties held by the decedent as a tenant by the entirety are not subject to the lien provided by Section 315 (a) is without merit. Section 315 (a) is unequivocal that the lien shall attach to the "gross estate" of the decedent. In view of *Tyler* v. *United States*, 281 U. S. 497, it is clear that the entire value of this entirety property was part of decedent's "gross estate." We understand the Bank nevertheless to suggest that property which is expressly defined as part of the gross estate, under Section 302, must be regarded as such only for the purpose of arriving at the tax but not for the purpose of the lien in Section 315 (a). It argues that "gross estate" as used in the expression "value of the gross estate" means something different from "gross estate" standing by itself. The Bank's argument, in effect, is that "value of the gross estate", as used in the statute, means "value" of the "gross estate" and of other property which is not part of the "gross estate".

[3] Apparently no appeal was taken in the *Security-First Nat. Bank* case. Shepherd's Citations show that the appeal was dismissed at 113 F. 2d 491, but that citation is erroneous because it relates to a different case. Our records show that no appeal was taken. Judgment has not yet been entered in the *McGuire* case so that the time within which to take an appeal has not expired.

There is nothing in the statute which warrants this *tour de force*.

Section 315 (b) does not impel a contrary conclusion. That subsection makes express reference to (1) transfers of property in contemplation of or intended to take effect in possession or enjoyment at or after death and (2) insurance proceeds passing to a specific beneficiary. The Bank's argument is that Congress would not have deemed it necessary to deal explicitly with these classes of property had they been included in the "gross estate" as that expression is used in Section 315 (a); that the fact that it did so shows that "gross estate" as used in Section 315 (a) means only the "estate" of the decedent as that term is commonly used to refer to the property available for the payment of debts; and that tenancies by the entirety, which concededly are not within Section 315 (b), are thus not covered by Section 315 (a), so that no lien attaches to them. But the first step in this chain of reasoning is erroneous. The purpose of Section 315 (b) is to impose a personal liability on certain transferees, thus supplying in such cases an additional remedy to supplement the lien. The specific provision therein for a "like lien" is the basis for the Bank's argument. However, this specific provision was undoubtedly included in Section 315 (b) because failure to do so, in conjunction with creation of another remedy against these two types of transferees, might be deemed an

expression of intent to make this other remedy exclusive as to such transferees. This caution seemed excessive to Congress in 1942 and while amending in other respects Section 827 (b) of the Internal Revenue Code, which is the codified successor to Section 315 (b), Congress took occasion to delete the language which appears to create a second lien on such property. For this language Congress substituted an express reference to the lien imposed by Section 827 (a) of the Internal Revenue Code, which is the codified successor to Section 315 (a). (Section 411 of the Revenue Act of 1942, Appendix, *infra*, pp. 51–52.) The committees of both houses of Congress explained the substitution as follows (H. Rep. No. 2333, 77th Cong., 2d Sess., p. 168; S. Rep. No. 1631, 77th Cong., 2d Sess., p. 241):

> This section clarifies and amends provisions of the Internal Revenue Code relating to the estate tax lien and transferee liability. Section 827 (a) of the Code imposes a lien upon the gross estate of the decedent. The following subsection provides for a like lien upon assets received by certain persons. *The latter provision is unnecessary and it is therefore eliminated.* Subsection (b), as amended, contains a cross reference to the lien imposed by subsection (a), *which continues to be applicable.* (Italics ours.)

The premise of the Bank's argument—that the interests referred to in Section 315 (b) are not a part of the "gross estate" and therefore would

not have been subjected to the lien if not expressly subjected to it by that subsection—is further negatived by Section 314 (b), immediately preceding Section 315 (a). In Section 314 (b) the term "gross estate" was understood by Congress to include insurance proceeds, although the Bank's argument would preclude such understanding. Insofar as pertinent, Section 314 (b) provides:

> *If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor,* the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of $40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio. (Italics ours.)

All the real estate here involved, then, is a part of decedent's gross estate and by the terms of Section 315 (a) a lien attached to it at the date of decedent's death, prior in time to the attachment of any of the liens asserted by petitioners. These are the fundamental considerations upon which the Government's claim depends. With the exception of the Bank's contention as to tenancies by the entirety, already discussed, petitioners do not appear to challenge these propositions. Petitioners' position, as we understand it, is that whatever the meaning of Section 315 (a) stand-

ing by itself, its language means something entirely different when read in connection with Section 3186 of the Revised Statutes, as amended, and that, in any event, the statutes of Michigan and the Fifth Amendment to the Constitution forbid application to its terms. To these contentions we now turn.

II

THE GOVERNMENT'S LIEN FOR FEDERAL ESTATE TAXES, ALTHOUGH UNRECORDED, IS SUPERIOR TO THE LIEN OF SUBSEQUENT MORTGAGEES

The Bank contends, in No. 156, that Section 315 (a), when read in connection with Section 3186 of the Revised Statutes, as amended (Appendix, *infra*), requires a recording of the Government's lien in order to bind subsequent mortgagees. The significance of this contention derives from the fact that the lien of the United States for federal estate taxes was not recorded prior to the execution of the mortgages taken by the bank.[4] Both courts below rejected the Bank's contention, holding that no statute required the filing of a notice of the federal estate tax lien in order to bind encumbrancers by mortgages executed subsequent to the date the federal lien attaches. We submit that this decision is correct.

Section 3186 of the Revised Statutes, as amended, now carried into Sections 3670–3677 of

[4] Notice of the lien for federal estate taxes was filed in the office of the Register of Deeds for Wayne County on December 26, 1935. (R. 240.)

the Internal Revenue Code, is the general federal lien statute, applicable to "any tax." As it stood at the time of decedent's death, the statute provided:

> That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: * * * The remainder of the section provided that whenever any state by appropriate legislation authorizes the filing of "such notice" in certain specified places "then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice" should be so filed.[5] With respect to the requirement of

~~The Bank contends, in No. 156, that Section~~

[5] This section has been subsequently amended (Appendix, *infra*) and the amendments, as we point out, *infra*, pp. 23–24, clarify in one respect the scope of Section 3186. With this exception, the subsequent amendments do not appear to bear upon this case.

notice, Section 3186 stands in striking contrast to Section 315 (a) of the Revenue Act of 1926, which is silent as to the recording of the lien or any other form of notice.

The requirement for the filing of notice of the Government's lien was first inserted in Section 3186 by the amendment of March 4, 1913, c. 166, 37 Stat. 1016. In view of *United States* v. *Snyder*, 149 U. S. 210, decided prior to the amendment, it is not open to question that, absent a federal statute requiring recording, the lien of the United States is superior to subsequent mortgages whether taken with or without notice of the prior lien.[6] Apart from the Bank's claim as to the Fifth Amendment, the question, then, is whether as a matter of statutory construction the notice requirement of Section 3186 should be read into Section 315 (a).

A comparison of these two sections confirms rather than detracts from the conclusion that Section 315 (a) establishes a lien which is wholly independent of the lien provided by Section 3186. In three important characteristics the liens imposed by the two sections differ from each other. *One:* The lien of Section 3186 does not come into

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[6] In *United States* v. *Curry*, 201 Fed. 371, 374 (Md.) the rule was stated:

> The government's lien is unaffected by the fact that a subsequent incumbrancer or purchaser became such without knowledge that the government had any interest in the property or claim upon it.

being before a demand and a refusal to pay the tax, whereas the lien of Section 315 (a) attaches at once upon the death of the decedent without reference to assessment or demand. *Two:* The lien of Section 3186 continues until the liability is paid, whereas the lien of Section 315 (a) continues only for ten years. *Three:* The lien of Section 3186 attaches to "all property and rights to property" belonging to the person liable for the tax, whereas the lien of Section 315 (a) does not attach to all the property of the estate, but only to that not used to pay administration expenses, and does not attach to all the property of a legatee but only to that received from the decedent.

The legislative history of the two statutes also confirms that two entirely separate liens are created. The lien provided by Section 3186 of the Revised Statutes was first enacted in 1866 (Section 9 of the Act of July 13, 1866, c. 184, 14 Stat. 107). When Congress enacted the first estate tax law in 1916 the lien provided by Section 3186 had been in existence for some fifty years and, if it had chosen to do so, Congress could readily have made this lien applicable to estate taxes, without more. It is significant that Congress did not do so.[7] Instead, it provided in Section 209 of

[7] The suggestion of the Bank (Br. 16) that Section 211 of the Revenue Act of 1916 made Section 3186 applicable to the estate tax loses its force when one observes that Section 211 applied only to provisions not inconsistent with the estate tax provisions.

the Revenue Act of 1916 (c. 463, 39 Stat. 756) for a federal estate tax lien in the identical terms which appear in Section 315 (a) of the Revenue Act of 1926. That provision is carried without any change of substance into Section 827 of the Internal Revenue Code (U. S. C., Title 26, Sec. 827). During all this time Section 3186 has been on the statute books. If the lien provided by Section 3186 had been deemed sufficient as applied to estate taxes it is inconceivable that Congress would have taken pains to enact and reenact another statute providing for the same thing. Contrast this with what Congress did when three years prior to the first enactment of the estate tax it first enacted the income tax. No special provision of any sort for a lien was or has been made, as the Bank points out (Br. 14, 15), in the income tax statutes. Thus the lien of Section 3186 is relied on for the enforcement of the income tax, as a result of a congressional silence which is not duplicated in the estate tax statutes. The reasonable inference is that when Congress desires the lien of Section 3186 to be the sole lien applicable to a particular tax, it proceeds as it did in the income tax provisions and not as it did in the estate tax provisions.[8]

[8] Apart from the foregoing history, the legislative materials are unrevealing as to the scope and operation of Section 315 of the Revenue Act of 1926 as well as Section 209 of the Revenue Act of 1916, from which it was derived.

The familiar rule of statutory construction that special provisions will prevail over general ones (*Missouri* v. *Ross,* 299 U. S. 72, 76) supports the conclusion that Section 3186 was deliberately made inapplicable, so far as the field of estate taxes is concerned, upon the enactment of Section 315 (a).

The conclusion that in 1926 Section 315 (a) imposed a lien which was not subject to the recording requirement of Section 3186, Revised Statutes, is strongly supported by the fact that when Congress subsequently determined to make certain requirements of Section 3186 applicable to liens otherwise created, it specifically said so. As it stood in 1926 the first lines of Section 3186 imposed the lien and the recording requirement, which followed shortly, and provided that "such lien" shall not be valid unless notice is filed, etc. The words "such lien" clearly referred to the lien created by Section 3186 and there was no evidence of a purpose to require the recording of any other lien. In 1928 Congress amended Section 3186 by adding subsections (c), (d) and (e), dealing with the release of liens, and at the same

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However, the consistent administrative practice has been to treat the lien imposed by Section 315 and corresponding sections of prior acts as "a lien entirely separate and distinct" from the lien imposed by Section 3186, Revised Statutes, and as "not subject to the provision * * * of the lien therein imposed." (G. C. M. 2663, VII–2 Cum. Bull. 355 (1928).)

time directed (Section 613 (a), Revenue Act of 1928):

> (f) Subsections (c), (d), and (e) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section.

This amendment provides an explicit recognition by Congress, both that liens separate and apart from the lien of Section 3186 are provided for the enforcement of internal-revenue taxes, and that the recording requirement, now set forth in Section 3672 of the Internal Revenue Code, is inapplicable to such other liens.

The reasons which impelled the adoption of the recording requirement in Section 3186 are not applicable to the estate tax. While the existence of an unsatisfied income, gift or similar tax liability would not be generally known prior to the recordation of the lien, that is not the case with unpaid estate taxes. The decedent's transmission of property at death, which is the occasion of the estate tax, should be a notorious fact to anyone purchasing from or lending to an estate or legatee since the validity of the title or security will depend on it. Thus necessarily forewarned that a taxable event has occurred,[9] a prospective purchaser or lender can often learn from the probate records whether the estate is large enough to be

[9] One dealing with an executor, surviving tenant or legatee does so with knowledge that there may be unpaid estate taxes. See *Shugars* v. *Chamberlain Amusements Enterprises*, 284 Pa. 200, 207; cf. *Heymann* v. *Viane*, 252 N. Y. 159.

taxable and whether the tax has been paid.[10] As the prospective purchaser or lender must go to the probate records to learn whether the would-be transferor or borrower has authority or title to make an effective transfer or hypothecation, there is nothing unreasonable in expecting him also to inquire from the same source whether the estate tax liability has been satisfied. If his search there leaves him in doubt, he can, through the executor, have recourse to the procedure of subsections (b) and (c) of Section 313 of the Revenue Act of 1926 (Appendix, *infra,* pp. 45–46).

Subsection (b) provides that upon application by the executor as defined in Section 300 (a), the Commissioner shall as soon as possible but in any event within one year notify the executor of the amount of the tax, and payment of this amount by the executor shall discharge him from personal liability for any deficiency thereafter found. Subsection (c) provides that this release of the executor shall not operate to release any part of the gross estate from the lien for such a deficiency "unless the title to such part of the gross estate has passed to a bona fide purchaser for value." As the parties herein agree that the Bank, like any Michigan mortgagee without notice, is a bona fide purchaser for value (Bank's Br. 48), the

[10] The fact that this is a more likely protection in the case of real property than of personal property is not a valid objection to this argument, since the same is true of the protection afforded by recording laws.

Bank could have protected itself by this procedure.[11] The Bank's argument that the statute is inapplicable where a bona fide purchaser acquires less than legal title is contrary to the practice of the Treasury since 1916 and is not supported by either the purpose of the statute or by the applicable provision of the regulations, Article 88 of Regulations 70 (Appendix, *infra*, p. 52). In any event any purchaser at a foreclosure sale would clearly be "a bona fide purchaser for value" and would be protected by it. Whether the State of Michigan and its political subdivisions could have been similarly protected seems immaterial since there is no suggestion that they were misled into performing governmental services and imposing taxes by the lack of recordation of the federal estate tax lien.

Subsection (c) of Section 313 does more than provide prospective purchasers and lenders with a means of protecting themselves which would be superfluous if the lien were governed by Section 3186. It also shows that the estate tax lien arises under Section 315 (a) rather than Section 3186.

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[11] The Bank makes the suggestion that this procedure avails the prospective purchaser or lender nothing since he cannot compel the executor to act pursuant to Section 313 (b). Of course neither can the prospective purchaser or lender be compelled to buy or lend should the executor refuse. The Bank's dilemma stems not from an executor's refusal but from the Bank's failure to utilize the machinery available to it.

Subsection (c) of Section 313 contemplates that the estate tax lien be in *effective* existence before the assessment of a deficiency, since it provides that only where the executor obtains such a release shall property sold to a bona fide purchaser prior to the assessment of a deficiency be free from the lien for such a deficiency. The assessment list can not be received by the Collector until after the deficiency was assessed, and the lien under Section 3186 does not become effective until the Collector receives the assessment list. Since Section 313 (c) contemplates that the lien would be in effective existence before the deficiency is assessed, the conclusion is compelled that the lien arises not under Section 3186 but under some other section which can only be Section 315 (a).

The difficulties peculiar to the collection of estate taxes furnish ample reason why Congress should have distinguished between the estate tax lien and the lien created by Section 3186 so far as the recording requirement is concerned. The facts of the instant case are illustrative. Decedent died May 5, 1926. His widow filed a federal estate tax return July 5, 1927. On March 14, 1930, the Commissioner of Internal Revenue notified the decedent's widow of the determination of a proposed deficiency in federal estate taxes in the amount of $23,000. An appeal was taken from the notice of deficiency by the widow to the United

States Board of Tax Appeals on May 10, 1930. Under Section 308 (a) of the Revenue Act of 1926 the Commissioner was precluded from making an assessment until the decision of the Board became final. This occurred about February 19, 1933. On the latter date an assessment was made for a deficiency of about $23,000 and accrued interest of about $8,000. Under Section 3186 no lien would have arisen until the assessment list was sent to the Collector, subsequent to February 19, 1933, almost seven years after decedent's death. In the meantime purchasers, mortgagees or judgment creditors might have acquired rights which, under Section 3186, would prevail over the United States because the lien would not arise and could not be recorded prior to that date.

The estate tax differs from income and excise taxes in that it must be collected from a fixed corpus, the content of which is determined "as of" the date of decedent's death and which is rarely supplemented by subsequent additions. While income is an annual phenomenon which tends to supply a flow of assets from which other types of past due taxes can be collected as long as a tax debtor lives, the estate tax is collectible only from the assets left by the decedent. If the tax is not collected from those assets it becomes forever uncollectible. As the estate tax cannot possibly be determined contemporaneously with the death of a decedent, a lien attaching at the

date of death is thus necessary to protect the tax during the interval which must necessarily elapse before the amount of the tax is determined. The Government is not usually advised of the decedent's death immediately and a recording requirement would mean that the tax would be unprotected until the notice of death was received, the location of the property ascertained, the amount of the tax determined, and the notices of lien actually filed. The construction of Section 315 for which the Bank contends would thus result in delay and palpably jeopardize the Government's claim for estate taxes. In any weighing of the equities the vital policy favoring the protection of the Government's revenues must be considered.[12]

The decisions of the lower courts squarely affirm the Government's understanding of Section 315 (a) as applied to subsequent mortgagees. In addition to the decisions of the courts below in the instant case, the same conclusion has been reached in *United States* v. *Security-First Nat. Bank, supra,* and *United States* v. *McGuire, supra.* There is no contrary decision.

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[12] The difficulties inherent in collection of the estate tax appear to have been recognized by Congress in Section 411 of the Revenue Act of 1942 (Appendix, *infra*, pp. 51–52). Although Section 411 relieves property sold to bona fide purchasers of the lien for estate taxes, a compensating remedy was provided whereby all the property of the legatee, etc., who sold to the bona fide purchaser is subjected to the lien.

III

AS APPLIED TO BIND SUBSEQUENT MORTGAGEES, SECTION 315 (A) DOES NOT OFFEND THE FIFTH AMENDMENT.

Any substantial contention that Section 315 (a), as applied to bind subsequent mortgagees, offends the Fifth Amendment is foreclosed by *United States* v. *Snyder, supra*, decided by an unanimous Court in 1893. In that case the taxpayer, Snyder, became liable to the Government in 1878 for the payment of internal revenue taxes imposed on the manufacture of tobacco. The taxes were duly assessed and certified to the Collector of Internal Revenue, who made demand for payment in November, 1879. By the terms of Section 3186 of the Revised Statutes as it then stood, a lien attached to the taxpayer's property at this time, recordation not being required. In 1885, four years after the taxpayer had sold some of the real property to which the lien had attached to a bona fide purchaser for value, the United States sued to foreclose its lien. The purchaser defended on the ground that the Government had failed to record its lien in accordance with Article 176 of the Louisiana Constitution. That article provided (149 U. S., at p. 213) that "No mortgage * * * on immovable property shall affect third persons, unless recorded or registered in the parish where the property is situated * * *." The single question presented for con-

sideration, said this Court, was "whether the tax system of the United States is subject to the recording laws of the States" (p. 213). Holding that the real estate remained subject to the Government's lien, the Court put its decision on the following ground (p. 214):

> The power of taxation has always been regarded as a necessary and indispensable incident of sovereignty. A government that cannot, by self-administered methods, collect from its subjects the means necessary to support and maintain itself in the execution of its functions is a government merely in name. If the United States proceeding in one of their own courts, in the collection of a tax admitted to be legitimate, can be thwarted by the plea of a state statute prescribing that such a tax must be assessed and recorded under state regulation, and limiting the time within which such tax shall be a lien, it would follow that the potential existence of the government of the United States is at the mercy of state legislation.
>
> Moreover, it scarcely seems necessary to look beyond the Constitution itself for a decisive reply to the question we are now considering. The 8th section of the 1st article declares that "the Congress shall have power to lay and collect taxes, duties, imposts and excises, . . . but all duties, imposts and excises shall be uniform throughout the United States." The power to impose and collect the public burthens is here given in terms as absolute as the language affords.

> The provision exacting uniformity throughout the United States itself imports a system of assessment and collection under the exclusive control of the general government. And both the grant of the power and its limitation are wholly inconsistent with the proposition that the States can by legislation interfere with the assessment of Federal taxes, or set up a limitation of time within which they must be collected.

Twenty years after this decision Section 3186, as we have seen (*supra*, p. 20), was amended to require recording of the Government's lien in order to bind subsequent mortgagees, purchasers, and judgment creditors. Section 315 (a), on the other hand, contains no recording requirement and in this respect is on all fours with Section 3186 as it stood prior to 1913. The *Snyder* decision is thus fully applicable to the instant case.

Notwithstanding this, the Bank argues (Br. 39–48) that to impose a lien upon the property in its hands as mortgagee amounts to a discrimination offensive to the Fifth Amendment. This argument is grounded upon Section 315 (b) of the Revenue Act of 1926, which after referring to property transferred in contemplation of death and to transfers intended to take effect in possession or enjoyment at or after death, provides that—

> Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be

> divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

The Bank, as we understand its position, points to the fact that a bona fide purchaser for value of property of the character covered by Section 315 (b) takes free and clear of the Government's lien, whereas a purchaser, like itself, of property in which decedent held an interest as a tenant by the entirety takes subject to the Government's lien. This, it concludes, works an unfair discrimination among classes of purchasers. We submit that this claim is untenable.

Unlike the Fourteenth Amendment, the Fifth Amendment contains no equal protection clause. *LaBelle Iron Works* v. *United States,* 256 U. S. 377, 392; *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 584–585; *Currin* v. *Wallace,* 306 U. S. 1, 14; *Sunshine Coal Co.* v. *Adkins,* 310 U. S. 381, 400–401. If, as in *Currin* v. *Wallace, supra,* it be assumed that there "might be discrimination of such an injurious character as to bring into operation the due process clause of the Fifth Amendment", it seems apparent that this case does not present that situation. The Bank is not called upon to pay any tax. Property in its hands is subjected to a lien which attached prior to the date of its mortgages, but this, standing by itself, is plainly constitutional. It is true that had the

mortgages been secured from one of the transferees included within Section 315 (b), the property would now be clear of the Government's lien. But the Bank knew with whom it was dealing and it is charged with a knowledge of the law. Had the Bank chosen to confine its lending activities to transferees included within the scope of Section 315 (b), it could readily have done so. Furthermore, in lending money to others it could have insisted upon compliance with Section 313 (b) and (c); this, as we have seen (*supra*, pp. 25–26), would have put its mortgages on a parity with those included within Section 315 (b).

Moreover, it cannot be said that Congress lacked rational basis in freeing from the lien property mortgaged by one of the class of transferees described in Section 315 (b) and in preserving the lien under similar circumstances with respect to the balance of the gross estate. Transfers of property in contemplation of death and transfers intended to take effect in possession or enjoyment at or after death, dealt with in Section 315 (b), differ from the other types of property which make up the gross estate. Among the latter classes of property are personal property coming into the hands of an executor or administrator and real estate passing from decedent to an heir or devisee, Section 302 (a); the dower or curtesy interests of a surviving spouse, Section 302 (b); transfers in which decedent retained the right at the date of his death to alter, amend or revoke,

Section 302 (d); tenancies by the entirety, Section 302 (e); and property passing under a general power of appointment exercised by the decedent's will, Section 302 (f).

There is a difference in the degree of notice afforded by the mere existence of the taxing statute which sets the property dealt with in Section 315 (b) apart from the other classes making up the gross estate. Accordingly the classes are not on a parity and Congress had an adequate reason for treating them differently. For example, a purchaser or mortgagee of property conveyed in contemplation of death is not put on notice of the circumstances of the conveyance or that the original grantor has died and that the essential condition precedent to the accrual of estate tax liability has thus occurred. On the other hand, a purchaser or mortgagee of property held by the decedent at the time of his death as a tenant by the entirety is put on notice by a most casual title search that the property was so held by the decedent; and the purchaser or mortgagee, like the Bank in the instant case, may be reasonably expected to satisfy himself that the decedent is dead before he will be willing to accept a deed or mortgage executed solely by the surviving tenant. In the latter situation, therefore, the purchaser or mortgagee necessarily knows that the condition precedent to the accrual of estate tax liability has occurred, and he is charged with a knowledge of the law that at the date of de-

cedent's death a lien attached to the entire gross estate, including entirety property.

Balancing the public interest in protecting a *bona fide* purchaser for value against the protection of the Government's revenues, Congress might well have concluded that in the former situation, but not in the latter, the interest in protecting the purchaser equalled or even outweighed the Government's requirements. In the former class of cases Congress evidently was content to rely upon the personal liability of the decedent's transferee and the lien attaching, under Section 315 (b), to the proceeds of the mortgage or sale. If this was the basis of choice, as it undoubtedly was,[18] the Bank has no standing to argue that

[18] The amendments made to Sections 302 and 315 (b) by Section 803 of the Revenue Act of 1932, c. 209, 47 Stat. 169, tend to confirm this view. The 1932 amendment expressly included within Section 302 transfers under which decedent retained for his life or any period not ascertainable without reference to his death, etc., certain specified interests in the transferred property. Section 315 (b) was then amended to include the transfers so expressly added to Section 302. It is noteworthy that in thus reconsidering the scope of Section 315 (b), Congress failed to add any other parts of the gross estate, such as tenancies by the entirety, so as to divest them of the lien in the hands of a bona fide purchaser for value. However, it should also be noted that by Section 411 of the Revenue Act of 1942 (Appendix, *infra*, p. 51). Congress has now, with respect to the estate of decedents dying after the enactment of that Act (Section 401), divested from the estate tax lien parts of the gross estate "sold * * * to a bona fide purchaser for an adequate and full consideration in money or money's worth" by any transferee of the decedent, including a surviving tenant by the entirety. Con-

the legislative decision was erroneous. "As to such choices, the question is one of wisdom and not of power." *Currin* v. *Wallace, supra,* p. 14; see *Steward Machine Co.* v. *Davis, supra; Carmichael* v. *Southern Coal Co.,* 301 U. S. 495, 509–514.

The Bank contends that for still other reasons the statute as applied by the courts below produces arbitrary and capricious results. It is argued (Br. 55–59) that in order to comply with Section 313 and thus obtain a marketable title it is necessary as a practical matter for the executor either to fail to pay the tax within the time provided by law or, at the very least, to forego the option, now provided by Section 811(j) of the Internal Revenue Code, of valuing the gross estate as of a date one year after the decedent's death. It is likewise maintained (Br. 59–61) that from the statute it is doubtful whether a lien attaches to the consideration received from a mortgage or sale of parts of the gross estate; that if it does not, the Bank's position as mortgagee is worse than that of the mortgagor or vendor; but that if it does, other results follow which "verge on the fantastic."

With respect to the problems connected with the payment of the tax, the Bank brushes aside, as indeed it must, the provisions authorizing the

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comitantly, personal liability for the payment of the tax to the extent of the value at decedent's death of property in the transferee's hands is imposed upon each such transferee.

Commissioner of Internal Revenue to extend the time for payment of the tax in the case of undue hardship. See Section 305 of the Revenue Act of 1926; Section 822(a)(2) of the Internal Revenue Code. In any event, the Bank has no standing to complain that the estate's constitutional rights, and not its own, are infringed. *Virginian Ry.* v. *Federation,* 300 U. S. 515, 558.

With respect to the imposition of the lien, we should suppose it clear, contrary to the Bank's doubts, that the consideration received from a sale or mortgage of any part of the gross estate remains subject to the lien in the hands of the mortgagor or vendor. This is expressly provided in Section 315(b) as to a part of the gross estate and as to the balance would seem to follow *a fortiori* from Section 313(c). The suggestion is baseless, therefore, that a mortgagee, such as the Bank, fares worse than the mortgagor.

The final answer to these objections of the Bank is that these problems are inherent in the collection of estate taxes without regard to whether notice of the lien is filed or not. The Bank recognizes that the lien for federal estate taxes attaches at the date of decedent's death (Br. 19), and complains only that it is bound without notice of the lien. However, even if it were possible to file appropriate notices wherever a decedent's property might be located simultaneously with his death, it is evident that this would not solve the executor's problem of secur-

ing a marketable estate in order to raise sums for the payment of the tax. Furthermore, even the Bank would acknowledge that if notice of the estate tax lien were filed, the Bank, as a mortgagee of entirety property, would take subject to the lien. Yet in such circumstances the same problems as those posed by the Bank would immediately arise, namely, whether the lien attaches to the consideration received and follows the consideration into the hands of a second bona fide purchaser for value. While, as we have indicated, we think these various problems are readily answerable from the terms of the statute and the application of equitable principles, it seems clear that they are irrelevant to the instant case. They are latent in any provision for a lien to secure the payment of taxes. Unless the estate tax lien itself is unconstitutional, which is not contended, the various collateral problems which attend the enforcement of any lien are necessary incidents of the exercise of a constitutional power and not independently open to question.

IV

THE GOVERNMENT'S LIEN FOR FEDERAL ESTATE TAXES IS FIRST IN TIME AND THE PROVISIONS OF THE FEDERAL CONSTITUTION PREVENT THE STATE FROM DISPLACING IT IN FAVOR OF SUBSEQUENT LIENS OF ITS OWN AND ITS POLITICAL SUBDIVISIONS

The State of Michigan, the County of Wayne, and the City of Detroit, in No. 214, contend that

their respective liens for real estate taxes are superior in right to the lien of the United States. Their liens for real estate taxes did not become operative prior to 1929 (R. 115–129, 239), some three years after the federal lien attached on May 5, 1926. Petitioners insist that the precedence in point of time of the federal lien is immaterial and that their liens are superior because (a) of various provisions of Michigan law, and (b) of an asserted inapplicability and invalidity of Section 315 (a).

Petitioners' contentions regarding Michigan law are (1) that the United States did not comply with the recording requirements of Section 3746 of the Compiled Laws of Michigan (Appendix, *infra*, pp. 49–50), which are made applicable by federal law (Section 3186, Revised Statutes), and (2) that Section 3429 of the Compiled Laws of Michigan (Appendix, *infra*, p. 49) makes the lien of the State, County and City real estate taxes a "first" lien.

(1) The applicability of Section 3746 is doubtful since it refers only to liens under Section 3186 of the Revised Statutes. As the federal estate tax lien arose under Section 315 (a) the proper conclusion seems to be that the Michigan statute does not purport to apply in this case.[14] But assuming that petitioners' construction of

[14] *United States* v. *Maniaci*, 36 F. Supp. 293 (W. D. Mich.), affirmed in 116 F. 2d 935 (C. C. A. 6th), cited by the State, is irrelevant since it involved a lien under Section 3186.

Section 3746 is correct, the only consequence of the failure of the United States to comply is that stated in Section 3186 of the Revised Statutes—namely, that the lien is not valid as against any mortgagee, purchaser or judgment creditor. Neither the State, County, nor City falls within these categories. Any argument that the State's authority to interfere with federal liens is not limited to the field permitted by Section 3186, Revised Statutes, is foreclosed by *United States* v. *Snyder, supra.*

(2) Petitioners' construction of Section 3429 is dubious. It merely provides that such taxes shall "become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof." This provision would seem merely to protect the lien against any bar due to passage of time. Any indication that the lien is to be a "first" lien must therefore rest upon the provision which follows, dealing with personal property. That provision states that the lien "shall also be a first lien, prior, superior and paramount, on all personal property * * *." Any inference drawn from "also" would seem to be overcome by the conflicting inference of "personal property". The

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Probably the case is erroneous as well, since Section 3186 permits the States to designate only the place where the notice is filed and not its contents as the Michigan statute attempts to do. Cf. Section 505 of the Revenue Act of 1942, which makes it clear beyond dispute that the States may designate only the place where the notice shall be filed.

Michigan cases cited by the State are inconclusive under the present statute.

Whatever may be the proper construction of Section 3429, it cannot be effective against a prior federal lien. It was squarely held in *United States* v. *Texas,* 314 U. S. 480, 486, that similar language in a Texas statute did not override the priority accorded by Section 3466, Revised Statutes.[15] That the federal priority here is achieved by a lien would not seem to change the result, and the only federal appellate decision on the subject has so held. *United States* v. *City of Greenville,* 118 F. 2d 963 (C. C. A. 4th).

That result rests upon the principle that no State can interfere with the constitutional exercise of the federal power to lay and collect taxes (Article I, Section 8), relied on in *United States* v. *Snyder, supra.* The result is buttressed by the Supremacy Clause (Article VI). *New York* v. *Maclay,* 288 U. S. 290.

Aside from their contentions regarding Michigan law, petitioners contend that Congress did not intend to make the federal lien superior to subsequently attaching liens. This is based upon the fact that the federal statute does not specifically provide for a "first" lien. But it is the very essence of a lien that it prevails over subsequently arising rights. *Beall* v. *White,* 94 U. S. 382, 388; *Howard* v. *Railway Co.,* 101 U. S. 837, 845; *Burton* v. *Smith,* 13 Pet. 464, 483; *United States* v.

[15] U. S. C., Title 31, sec. 191.

Alabama, 313 U. S. 274; *Rankin* v. *Scott,* 12 Wheat. 177, 179. Tax liens serve the same general purpose as Section 3466 and the lien statute should therefore receive the same liberal construction. *United States* v. *Emory,* 314 U. S. 423, 426. At least the lien statute should not be construed to deny to federal liens those incidents which normally accompany ordinary liens.

The plea that unless the state liens are granted paramountcy the State will be deprived of all means of collecting its taxes herein involved means only that the State and the United States are similarly situated in that respect. The federal estate tax deficiency has not been paid and nothing in the record suggests that the United States will be able to collect it elsewhere.

Petitioners' argument as to the effect and validity of Section 315 (a) proceeds as if the United States were attempting to displace a state lien, prior in time, by a subsequent federal lien. This is particularly true of pages 32 to 34 of their brief, and also of pages 19–23 of their brief. The fact is, however, that the federal lien attached over three years before the various state liens, and the State is attempting to achieve paramountcy for its tax liens over a pre-existing federal tax lien. As we have seen, the state lacks power to do this. The relationship between the states and the Federal Government leaves no room for the application of the principles upon which the states may displace prior private liens.

CONCLUSION

For the above reasons we submit that the judgments of the Circuit Court of Appeals for the Sixth Circuit should be affirmed.

Respectfully submitted,

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NOVEMBER, 1942.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat 9:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *

* * * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: * * *

* * * * *

SEC. 313. * * *

(b) If the executor makes written ap-

plication to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

* * * * *

SEC. 315 (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

Revised Statutes, as amended by the Act of February 26, 1925, c. 344, 43 Stat. 994:

SEC. 3186. That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a

lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: *Provided further,* That whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, and in the State of Louisiana in the parishes thereof, and in the States of Connecticut, Rhode Island, and Vermont in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records of the towns and cities, then such lien shall not be valid in that State against any mortgagee, purchaser, or judgment creditor until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, or in the office of the registrar or recorder of deeds or town or city clerk having custody of the land records in the States of Connecticut, Rhode Island, and Vermont of the towns or cities within which the property subject to the lien is situated.[1]

[1] The above represents the provisions of Section 3186 as they stood when the decedent died. They were subsequently amended by Section 613 (a) of the Revenue Act of 1928, c. 852, 45 Stat. 791, and by Section 509 of the Revenue Act of 1934, c. 277, 48 Stat. 680, and, as so amended, were in-

Compiled Laws of the State of Michigan, 1929:

3429 [as amended by Act No. 38 of the Extra Session of 1934] *Property taxes; lien after December 1; precedence of lien, exception, city personal property tax lien.* SEC. 40. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, * * *.

3746 *U. S. tax liens; filing of notice, contents; register of deeds, duty.* SECTION 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United

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corporated in Sections 3670–3677 of the Internal Revenue Code. (U. S. C., Title 26, Secs. 3670–3677.) Section 3672 of the Internal Revenue Code, in turn, was amended by Section 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862. Apart from clarifying the scope of Section 3186 as it stood in 1926 (*supra*, pp. 23–24), none of these amendments appears pertinent to this case.

States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty [50] cents for such notice, file and index the same in a separate book, entitled "Record of United States Tax Liens", indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six [3186] of the revised statutes of the United States.

Constitution of the United States:

ARTICLE I

* * * * *

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * * * *

ARTICLE VI

* * * * *

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * * * *

Revenue Act of 1942, Public Law 753, 77th Cong., 2d Sess:

SEC. 411. LIABILITY OF CERTAIN TRANSFEREES.

(a) *Imposition of Liability.*—Section 827 (b) is amended to read as follows:

"(b) *Liability of Transferee, Etc.*—If the tax herein imposed is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under section 811 (b), (c), (d), (e), (f), or (g), to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property sold by such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien provided in section 827 (a) and a like

lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth."

(b) *Definition of Transferee.*—Section 900 (e) is amended to read as follows:

"(e) *Definition of 'Transferee'.*—As used in this section, the term 'transferee' includes heir, legatee, devisee, and distributee, and includes a person who, under section 827 (b), is personally liable for any part of the tax."

Treasury Regulations 70 (1926 ed.), Article 88:

Property subject to lien.—This lien attaches to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency tax found to be due upon review and audit.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

* * * * *

(3) Such portion of the gross estate as has passed to a bona fide purchaser for value after payment of the full amount of tax determined by the Commissioner pursuant to a request of the executor for discharge from personal liability, as authorized by section 313 (b) and (c) (see Art. 67), but there is substituted a like lien upon the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1942

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SUPREME COURT OF THE UNITED STATES.

No. 156.—October Term, 1942.

The Detroit Bank, formerly the Detroit Savings Bank, a Michigan Banking Corporation, Petitioner, *vs.* The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[January 4, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The questions for decision are:

(1) Whether the lien for federal estate taxes authorized by § 315(a) of the Revenue Act of 1926, 44 Stat. 9, 80, attaches to the interest of the decedent in an estate by the entirety.

(2) Whether the lien is required to be recorded under the provisions of R. S. § 3186, as amended, in order to give it superiority to the lien of a mortgagee who acquired his mortgage for value in good faith without knowledge of the tax lien.

(3) Whether § 315(a), so applied as to give the lien superiority over such subsequent mortgages, offends the Fifth Amendment.

The Government brought the present suit in the district court pursuant to R. S. § 3207, to foreclose an asserted lien for estate taxes assessed under § 302(e) upon certain parcels of real estate. The real estate had been owned at the time of his death by decedent and his wife as tenants by the entirety. Following his death the real estate was not included as a part of his estate in computing the federal estate tax. Prior to assessment or payment of the tax, the parcels of real estate in question were mortgaged, some by decedent's widow and others by his children, to petitioner who acted without knowledge of the Government's asserted lien or claim for taxes. Default in payment of the mortgage indebtedness having occurred, petitioner bought in the mortgaged property on foreclosure sale. The trial court found that petitioner acquired the mortgages in good faith and for value.

The Commissioner of Internal Revenue assessed an estate tax deficiency against decedent's estate by reason of the failure to in-

clude the value of the estate by the entirety in the computation of the tax, which the Board of Tax Appeals sustained. The Government then brought the present proceeding to enforce the lien. The district court held that the tax lien, although unrecorded, was superior to the mortgage lien and to local, state and county liens for taxes, which had accrued after the death of decedent. The Circuit Court of Appeals affirmed, 127 F. 2d 64. We were moved to grant certiorari, 317 U. S. —, by the importance of the questions presented to the administration of the revenue laws.

Section 315(a) of the Revenue Act of 1926 provides in part that:

"Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed."

The lien attaches at the date of the decedent's death, since the gross estate is determined as of that date and the estate tax itself becomes an obligation of the estate at that time without assessment. See *Hertz* v. *Woodman*, 218 U. S. 205, 220; *Ithaca Trust Co.* v. *United States*, 279 U. S. 151, 155; *United States* v. *Ayer*, 12 F. 2d 194; *Rosenberg* v. *McLaughlin*, 66 F. 2d 271. That the lien attaches at the decedent's death without necessity for assessment or demand is implicit in the proviso that such part of the estate as is used for payment of charges against the estate and expenses of administration shall be "divested of the lien".

Petitioner urges that since the lien here asserted is "upon the gross estate of decedent" it does not attach to the land held by the entirety which passed to the decedent's widow, not as a part of his estate but by her right to survivorship. But this argument disregards the fact that the lien is for the particular tax imposed by § 302 of the Revenue Act of 1926 upon "the value of the gross estate of decedent" at the time of his death, including "the value at the time of his death of all property real or personal . . . (e) to the extent of the interest therein held . . . as tenants by the entirety by the decedent and spouse . . ."

Since the lien authorized by § 315(a) is for the tax which in its computation includes as a part of the taxable estate the value of the estate by the entirety, see *Tyler* v. *United States,* 281 U. S. 497, we think it too plain for argument that the lien extends to the estate as thus defined and made the base on which the tax is computed. The gross estate of decedent within the meaning of § 315(a) is the estate or property on which the tax chargeable to decedent's estate is computed. Congress, in § 314(b), similarly denominated the proceeds of insurance on the life of decedent payable to beneficiaries as "a part of the gross estate" in providing for recovery from the beneficiaries of their pro rata shares of the estate tax. We cannot impute to Congress an intention not disclosed by the statute or its legislative history to exclude from the tax lien property which it directs to be included in the decedent's gross estate for the purpose of computing the tax.

Nor can we conclude, as petitioner argues, that the lien for estate tax authorized by § 315(a) is subject to the earlier provision for recording tax liens in R. S. § 3186. This section, so far as now relevant, provides,

"That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the Collector, except when otherwise provided, until paid . . . . upon all property and rights to property belonging to such person, provided, however, that such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the Collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated . . . ."

The section contains a further proviso that whenever any state, by appropriate legislation, makes provision for the filing of such notice in the office of a registrar or recorder of deeds "then such liens shall not be valid in that state against any mortgagee, purchaser or judgment creditor until such notice shall be filed" in the appropriate office. Michigan has made provision for filing notices of such tax liens in the offices of the registers of deeds in the counties of the state. § 3746 Compiled Laws of Michigan, 1929, ~~as amended by Act No. 38, Extra Session 1934~~.

The part of R. S. § 3186 imposing the lien was enacted in 1866, 14 Stat. 136. The provision for filing notice of government tax liens was added by amendment of March 4, 1913, 37 Stat. 1016. Before the amendment this Court had held in *United States* v.

Snyder, 149 U. S. 210; cf. *United States* v. *Curry,* 201 Fed. 371, 374, that in the absence of a federal statute requiring government tax liens to be recorded they are superior to subsequent mortgages.

Petitioner contends that Congress, in enacting § 209 of the Revenue Act of 1916, which, with amendments, became § 315(a) of the Revenue Act of 1926, did not impose an independent lien but merely made expressly applicable to the federal estate tax the lien created by R. S. § 3186, modifying that lien in some respects as will be further noted. It urges that save where inconsistent with the express terms of § 315(a), all provisions of R. S. § 3186 are made applicable to the estate tax lien by reason of § 211 of the Revenue Act of 1916, which provides:

"That all administrative, special and general provisions of law, including the law in relation to the assessment and collection of taxes not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions."

But we think that the differences between R. S. § 3186 and § 315(a), and their legislative history as separate enactments, indicate that each was intended to operate independently of the other.

Section 3186 refers only to liens which are made such by that section. Section 315(a) authorizes the lien for estate taxes and makes no reference to R. S. § 3186 or to any requirement for recording notice of the lien. The lien of R. S. § 3186 is upon all the property of the person liable for the tax, while the lien of § 315(a) attaches only to the property included in and taxed as the gross estate not used to pay administration expenses. The lien of R. S. § 3186 continues until the tax liability is paid while the lien of § 315(a) continues for ten years from the death of the decedent. Of particular significance is the difference in time when the liens attach under the two sections. Under R. S. § 3186 there is no lien and no notice can be recorded until there has been a demand by the collector and a refusal to pay it by the taxpayer. Under § 315(a) as has been stated, the lien arises on the death of the decedent and becomes effective against purchasers and mortgagees without assessment or demand and obviously before it would be possible to record a notice of lien under the provisions of R. S. § 3186.

Since the enactment of Revenue Act of 1916, R. S. § 3186 has been amended four times,[1] and § 209 of the Revenue Act of 1916

[1] Act of Feb. 26, 1925, 43 Stat. 994; Revenue Act of 1928, § 613, 45 Stat. 875; Revenue Act of 1934, § 509, 48 Stat. 757; Revenue Act of 1939, § 401, 53 Stat. 882. The section is now §§ 3670-77 of the Internal Revenue Code.

(which became § 315(a) of the 1926 Act) has been amended twice and twice reenacted without amendment.[2] With one exception, in none of the amendments or reenactments of the one section was any reference made to the other. Section 409 of the Revenue Act of 1921 added a provision to the estate tax lien section authorizing the Commissioner under certain circumstances to release the lien. A similar provision was not added to R. S. § 3186 until the Revenue Act of 1928. By § 613 of that Act, § 3186 was amended to provide for such release, the amendment, by subsection (f), being made applicable to "a lien in respect of any internal revenue-tax, whether or not the lien was imposed by this section".

At the same time, the release provision of § 315(a) was repealed. By § 809 of the Revenue Act of 1932, however, the latter was reenacted, it having been discovered that there was need for a provision authorizing release of the estate tax lien prior to asessssment. H. Rep. No. 708, 72d Cong. 1st Sess. 50. Moreover it is not without significance that Congress, in enacting a gift tax in the Revenue Act of 1932, provided in § 510 of that Act that the gift tax should be a lien on the property passing to the donee, using words almost identical to these of § 315(a). The Committee Reports state that "by this provision there is imposed a lien additional to that imposed by section 3186 of the Revised Statutes". H. Rep. No. 708, 72d Cong. 1st Sess. 30; Sen. Rep. No. 665, 72d Cong. 1st Sess. 42. This history and the differences between the provisions already noted, would seem to compel the conclusion that § 315(a) was intended to operate independently of R. S. § 3186, and that the estate tax lien created by the former is not subject to the latter's requirement of recordation.

Sections 313(b) and (c) lend support to this conclusion. Subsection (b) sets up a procedure whereby the Commissioner may be required to certify the amount of the tax due and in that event subsection (c) releases any part of the gross estate subsequently acquired by a bona fide purchaser, from any lien for a deficiency in the tax which may be thereafter assessed—a procedure which would have afforded adequate protection to petitioner from any deficiency lien in this case. These provisions not only recognize that the lien comes into existence before the tax is assessed or de-

[2] Revenue Act of 1919, § 409, 40 Stat. 1100; Revenue Act of 1921, § 409, 42 Stat. 283; Revenue Act of 1924, § 315(a), 43 Stat. 312; Revenue Act of 1926, § 315(a), 44 Stat. 80. The section is now § 827 of the Internal Revenue Code.

manded, but they are unnecessary and inoperative if notice of the lien is required by R. S. § 3186 to be recorded.

It is evident from a comparison of the two sections that Congress, in providing for the estate tax lien, has proceeded on the assumption that in the case of the tax on property passing at death and which is distributed in consequence of the death, there is greater need of a lien in advance of assessment and demand for payment of the tax than in the case of other types of taxes; and that there is less need for protection of third persons by a recorded notice of the lien when the property passing at death is normally dealt with by probate and estate tax proceedings of public notoriety.

This is emphasized by the provisions of § 315(b) ~~and (c)~~ which relieve bona fide purchasers of property transferred *inter vivos* by the decedent in contemplation of death, from the lien which in the case of property transferred at death is enforcible against such purchasers. This provision, like § 313(c) would be unnecessary if R. S. § 3186 required notice of the lien to be recorded. The conclusion seems inescapable that the two sections apply independently, each of the other, at least to the extent that notice of the lien authorized by § 315(a) is not required to be recorded under R. S. § 3186. Whether the lien created by § 315(a) could be recorded by the procedures established by § 3186 and state statutes enacted in accordance with that section need not now be decided.

Petitioner also insists that the statute violates the Fifth Amendment by authorizing an unrecorded tax lien against the property mortgaged to it and withholding such a lien against innocent purchasers of property which a decedent had transferred *inter vivos* in contemplation of death. Unlike the Fourteenth Amendment, the Fifth contains no equal protection clause and it provides no guaranty against discriminatory legislation by Congress. *LaBell Iron Works* v. *United States,* 256 U. S. 377, 392; *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 584-585; *Sunshine Coal Co.* v. *Adkins,* 310 U. S. 381, 400, 401; *Helvering* v. *Lerner Stores Co.,* 314 U. S. 463, 468. Even if discriminatory legislation may be so arbitrary and injurious in character as to violate the due process clause of the Fifth Amendment, see *Steward Machine Co.* v. *Davis, supra,* 585; *Currin* v. *Wallace,* 306 U. S. 1, 13, no such case is presented here.

For reasons already indicated we think there is adequate basis for the distinction made by the statute between innocent purchasers of property which passes at the decedent's death and those of property which he conveyed in his lifetime in anticipation of death. As

we have pointed out, the estate tax status of property passing at decedent's death is more readily ascertained than that of property which he has conveyed away in his lifetime and which so far as normal probate and tax proceedings are concerned would not appear to be related to his estate or taxable as a part of it. We do not find in such a classification any basis for saying that the discrimination in the statute is so arbitrary as to violate due process.

Affirmed.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

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Test:

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IN THE

Supreme Court of the United States

October Term, 1942

No. 214

STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a corporate body politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a municipal corporation, and ALBERT E. COBO, Treasurer of the City of Detroit,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Sixth Circuit

PAUL E. KRAUSE,
Corporation Counsel,
JOHN H. WITHERSPOON,
Chief Assistant Corporation Counsel,
BERT R. SOGGE and
JAMES H. LEE,
Assistants Corporation Counsel,
Attorneys for Petitioners, City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit,
Detroit, Michigan.

WILLIAM E. DOWLING,
Prosecuting Attorney,
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HELEN MILLER,
Assistants Prosecuting Attorney,
Attorneys for Petitioners, County of Wayne, a Corporate Body Politic, and Jacob P. Sumeracki, Treasurer for the County of Wayne,
Detroit, Michigan.

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Attorney General,
EDMUND E. SHEPHERD,
Solicitor General,
DANIEL J. O'HARA,
Assistant Attorney General,
Attorneys for Petitioners, State of Michigan and John J. O'Hara, Auditor General for the State of Michigan,
Lansing, Michigan.

THE UNITED PRESS, DETROIT, MICHIGAN

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No.....

STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a Corporate Body Politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a Municipal Corporation, and ALBERT E. COBO, Treasurer of the City of Detroit, *Petitioners,*

v.

THE UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals For the Sixth Circuit

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, the State of Michigan, John J. O'Hara, Auditor General for the State of Michigan, County of Wayne, a Corporate Body Politic, Jacob P. Sumeracki, Treasurer for the County of Wayne, City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit, respectfully represent that:

As far as petitioners are concerned, this case involves the question whether the lien of the United States for

estate taxes is subordinate to the specific lien for taxes and assessments imposed by the State of Michigan County of Wayne and City of Detroit and made by the Constitution, statutes of the State of Michigan and the Charter of the City of Detroit a first lien, prior, superior and paramount to any other lien.

John P. Paul died intestate at Detroit, Michigan, May 6, 1926 (R. 102). At the time of his death, he and his wife, Lena Paul, owned as tenants by the entirety a considerable number of parcels of real estate located in that City (R. 230). Lena Paul, on the death of John P. Paul, became the sole owner of the said property.

On or about July 5, 1927, Lena Paul filed a Federal Estate tax return covering the estate of her husband (R. 229) and an estate tax liability of $3,450.00 which was duly paid (R. 229). Under the date of March 14, 1930, the Commissioner of Internal Revenue of the United States of America notified Lena Paul, as beneficiary of her husband's estate, of a deficiency of $23,271.84 in estate taxes. (R. 229, 230). A petition was filed for a redetermination and on November 4, 1932, the United States Board of Tax Appeals sustained the deficiency asserted by the Commissioner of Internal Revenue and entered its order accordingly (R. 230). No appeal was taken and on February 19, 1933, the Commissioner of Internal Revenue assessed against the estate of John P. Paul the deficiency in the principal amount of $23,271.84, together with interest in the amount of $8,080.28 (R. 230). No part of this has been paid (R. 230).

The present suit was instituted on May 4, 1936 to collect the amount found due by foreclosure of its lien for estate taxes against fifty parcels of real estate. The State of Michigan, the County of Wayne and the City of Detroit were also made parties defendant by reason of liens which

each possessed for unpaid real estate taxes assessed against the property in question.

The case was tried by the District Court upon a stipulation of facts supplemented by testimony. Only such facts as relate to the controversy between Respondent and these petitioners are set forth in detail above.

The District Court found that Sec. 315 (a) of the Revenue Act of 1926 (Section 827 (a) of the Internal Revenue Code) imposes a lien for the collection of Federal Estate Taxes, which is separate and distinct from the general tax lien created by Section 3186 of the Revied Statutes (Sections 3670 to 3677 of the Internal Revenue Code) and that the provisions of Section 3186 of the Revised Statutes requiring that notice be filed or recorded to make the lien imposed by the latter section valid as against bona fide purchasers and encumbrances, had no application to the lien imposed by Section 315 (a) of the Revenue Act of 1926.

The District Court also found that the lien asserted by Respondent in this case being prior in time was superior in right to the liens asserted by the State of Michigan, the County of Wayne and City of Detroit, regardless of notice.

The findings of fact and conclusions of law of the District Court, which are reported in 41 Fed. Supp. 41, are found on pages 229 to 243, both inclusive, of the Record; the Court's Decree on pages 247 to 256, inclusive.

Upon appeal by Petitioners and others to the United States Circuit Court of Appeals for the Sixth Circuit, that Court affirmed the decision of the District Court. The opinion of the Circuit Court of Appeals (R. 290) is reported in 127 Fed. (2nd) 64—Judgment entered April 8, 1942.

This Petition presents one question.

IS THE REAL ESTATE TAX AND ASSESSMENT LIEN LEVIED BY THE CITY OF DETROIT, COUNTY OF WAYNE AND STATE OF MICHIGAN, A FIRST LIEN, PRIOR, SUPERIOR AND PARAMOUNT TO ANY OTHER LIEN OR ENCUMBRANCE OR IS IT EXTINGUISHED BY THE FORECLOSURE OF THE LIEN OF THE GOVERNMENT?

The District Court and the Circuit Court of Appeals both determined that the liens of the United States were paramount to the liens of the State of Michigan, County of Wayne and City of Detroit which were acquired subsequent to the acquisition of the lien of the United States.

BASIS OF JURISDICTION

Jurisdiction is invoked under *Section* 240 (*a*) *of the Judicial Code, as amended by the Act of February* 13, 1925, 43 *Stat.* 938; *U. S. C.* 347 (*a*).

Petitioners believe that the judgment of the Circuit Court of Appeals is erroneous and contrary to the just rights of petitioners, and that this Court should require said cause to be certified to this Court for its review and determination, in conformity with the provisions of the Act of Congress in such case made and provided.

Certiorari should be granted for the following reasons:

I

The decision of the Circuit Court of Appeals involves the determination of an important question of Federal Law which has not been but should be settled by this Court, namely, the character, scope and effect of the lien

accorded to the United States of America by Federal Statutes for the collection of taxes.

More particularly, it concerns the priority of the lien of the United States over the liens of the State of Michigan and its political subdivisions.

II

The decision of the Circuit Court of Appeals, does, in effect, extinguish liens of the State of Michigan and its political subdivisons which arise by virtue of taxes lawfully assessed. It takes away from the petitioners the right to collect certain taxes lawfully assessed.

These taxes constitute the basic source of revenue for the City, the County, the State having other sources of revenue.

Wherefore, petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, to the end that said cause may be reviewed and determined by this Court, as provided by law, and that petitioners may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and that the judgment of said Circuit Court of Appeals may be reversed by this Honorable Court.

THE CITY OF DETROIT, a Municipal Corporation, and Albert E. Cobo, Treasurer of the City of Detroit,

By Paul E. Krause,
Corporation Counsel;
John H. Witherspoon,
Chief Assistant Corporation Counsel;

Bert R. Sogge and
James H. Lee,
Assistants Corporation
Counsel.

COUNTY OF WAYNE, a Corporate Body Politic, and Jacob P. Sumeracki, Treasurer of the County of Wayne,
By William E. Dowling,
Prosecuting Attorney, and
Samuel Brezner and
Helen Miller,
Assistants Prosecuting
Attorney.

STATE OF MICHIGAN and John J. O'Hara, Auditor General for the State of Michigan,
By Herbert J. Rushton,
Attorney General;
Edmund E. Shepherd,
Solicitor General;
Daniel J. O'Hara,
Assistant Attorney General.
Attorneys for Petitioners.

APPENDIX

Section 3186 *of the Revised Statutes of the United States* (*Act of July* 13, 1866, *c.* 184, *Sec.* 9, 14 *Stat.* 107 *as revised and amended by an Act of March* 1, 1879, *c.* 125, *Sec.* 3, 20 *Stat.* 331) *as amended by Act* 451, *March* 4, 1913 (*c.* 166, 37 *Stat.* 1016), *by an Act of February* 26, 1925, *c.* 344, 43 *Stat.* 994, *by Section* 613 *of the Revenue Act of* 1928, *by Section* 509 *of the Revenue Act of* 1934 *and Section* 401 *of the Revenue Act of* 1939, *now known as Sections* 3670 *to* 3677 *of the Internal Revenue Code*, as amended, reads as follows:

"§ 3670. PROPERTY SUBJECT TO LIEN

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

"§ 3671. PERIOD OF LIEN

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

"§ 3672. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In accordance with the law of the State or Territory in which the property subject to the lien is situated,

whenever the State or Territory has by law provided for the filing of such notice; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) (1) *Exception in Case of Securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner provided in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase, such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of Security.*—As used in this subsection the term 'security' means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(3) *Applicability of Subsection.* — Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose."

"§ 3673. RELEASE OF LIEN

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) *Liability Satisfied or Unenforceable.* — The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) *Bond Accepted.*—There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations."

"§ 3674. PARTIAL DISCHARGE OF PROPERTY

(a) *Property Double the Amount of the Liability.*—Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to

the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) *Part Payment.*—Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States."

"§ 3675. EFFECTS OF CERTIFICATES OF RELEASE OR PARTIAL DISCHARGE

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished."

"§ 3676. SINGLE BOND COVERING RELEASE OF LIEN AND PAYMENT OF INCOME TAX DEFICIENCY

The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of a single bond complying both with the requirements of Section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of subsection (b) of section 3673."

"§ 3677. EXTENDED APPLICATION FOR PROVISIONS RELATING TO RELEASE OR PARTIAL DISCHARGE

Sections 3673, 3674, 3675, and 3676 shall apply to a lien in respect of any internal revenue tax, whether or not the lien is imposed by this sub-chapter."

Section 315 *of the Revenue Act of* 1926, *as amended by Section* 613 (*b*) *of the Revenue Act of* 1928 *and by Sections* 803 *and* 809 *of the Revenue Act of* 1932, *now known as Section* 827 *of the Internal Revenue Code* read as follows:

"§ 827. LIEN FOR TAX

(a) *Upon Gross Estate.* Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) *Upon Property of Transferee.* If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life, or for any period not ascertainable without reference to his death or for any period which does not in fact before his death (A) the possession and enjoyr of, or the right to the income from, the property, (B) the right, either alone or in conjunction with an person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such

beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(a) *Continuance after Discharge of Executor.* The provisions of section 825 shall not operate as a release for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees."

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PETITIONERS' SUPPORTING BRIEF

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Assistant Attorney General,
Attorneys for Petitioners, State of Michigan and John J. O'Hara, Auditor General for the State of Michigan,
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STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a Corporate Body Politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a Municipal Corporation, and ALBERT E. COBO, Treasurer of the City of Detroit, *Petitioners,*

v.

THE UNITED STATES OF AMERICA, *Respondent.*

PETITIONERS' SUPPORTING BRIEF

Official Reports of Opinions Rendered in the Courts Below

The opinion of the District Court (R. 229-243) is reported in 41 *Fed Supp.* 41.

The opinion of the Circuit Court of Appeals (R. 292-296) is reported in 127 *Fed.* (2*nd*) 64.

Statement of Grounds on Which Jurisdiction of Supreme Court Is Invoked

This is a civil suit in equity arising under the laws of the United States providing for internal revenue and the collection thereof (R. 100).

The Respondent, the United States of America, instituted this action, as plaintiff, to foreclose its lien for Federal Estate Taxes against fifty parcels of real estate located in the City of Detroit, Michigan, all of which were owned at once time by John P. Paul and Lena Paul, his wife, as tenants by the entirety, to collect a deficiency in Federal Estate Taxes in the amount of $23,271.00 and interest assessed against the Estate of John P. Paul. The State of Michigan, County of Wayne and City of Detroit are made parties defendant by reason of having liens on said property by reason of unpaid taxes and assessments (R. 229).

The case was tried by the District Court upon a stipulation of facts supplemented by some testimony. The Decree in the District Court, in general, granted the relief prayed for in the Bill of Complaint, except with respect to those parcels of real estate which were encumbered prior to the death of John P. Paul (R. 247-256). Petitioners and six other defendants appealed from that Decree to the United States Circuit Court of Appeals for the Sixth Circuit which affirmed the Decree of the District Court (R. 289-291).

Certiorari is prayed and jurisdiction is invoked under *Section* 240 (*a*) *of the Judicial Code, as amended by the Act of February* 13, 1925, 43 *Stat.* 938; 28 *U. S. C.* 347 (*a*).

Petitioners submit that this Honorable Court should grant a Writ of Certiorari as prayed for the following reasons:

I

The decision of the Circuit Court of Appeals involves the determination of an important question of Federal law, which has not been but should be settled by this Court, namely, the character, scope and effect of the lien

accorded to the United States of America by Federal Statutes for the collection of Federal Estate Taxes.

More particularly it concerns the priority of the lien of the United States over the liens of the State of Michigan, County of Wayne and City of Detroit.

II

The decision of the Circuit Court of Appeals involves the determination of a question of substance, which has not been but should be settled by this Court, relating to the construction and application of Statutes of the United States of America, namely, *Sec.* 315 (*a*) *of the Revenue Act of* 1926 (*Section* 827 (*a*) *of the Internal Revenue Code*) and *Section* 3186 *of the Revised Statutes, as amended* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code, as amended*).

III

The decision of the Circuit Court of Appeals is vital to the State of Michigan and its political subdivisions in that the decision destroys its liens which arose by virtue of taxes lawfully assessed.

Statement of Case

At the time of his death on May 5, 1926 (R. 229), John P. Paul and his wife, Lena Paul, owned, as tenants by the entirety, approximately fifty parcels of real estate in the City of Detroit, Michigan (R. 230-231). On July 5, 1927, Lena Paul, as widow and survivor of John P. Paul, filed an Estate Tax Return, which was paid (R. 229).

On March 14, 1930, the Commissioner of Internal Revenue asserted a deficiency in estate taxes of $23,271.84 against her husband's estate (R. 229, 230). An appeal was taken to the Board of Tax Appeals and on November

4, 1932, the Commissioner's determination was upheld (R. 230). No appeal was taken from the decision and on February 19, 1933, the amount of the deficiency and interest was assessed against John P. Paul's estate, which was not paid (R. 230).

On May 4, 1936 the present suit was instituted and tried by the District Court on a stipulation of facts supplemented by testimony.

The District Court found that the lien asserted in the present proceedings arose at the death of John P. Paul and that, even though unrecorded, was superior to the liens of the State of Michigan, the County of Wayne and the City of Detroit for unpaid State, County or City real estate taxes (R. 247).

The plaintiff's tax lien was made February 17, 1933; the list received by the Controller February 23, 1933 and notice given to the Estate demanding payment on February 25, 1933. The notice of plaintiff's tax lien was filed with the Register of Deeds of Wayne County January 2, 1936 in Liber 5162, dated December 26, 1935. Notice of the lien was filed with the Clerk of the District Court December 30, 1935.

Specification of Errors Relied on

The Circuit Court of Appeals erred in the following respects:

1. In affirming the Decree of the District Court.
2. In determining that the lien asserted by the United States was paramount to the lien of the State of Michigan, the County of Wayne and the City of Detroit, even though recorded after the vesting of the lien by the political subdivisions.

3. In determining that the lien referred to in *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Sec.* 827 (*a*) *of the Internal Revenue Code*) is separate and distinct from that imposed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal revenue Code*).

Reference to Statutory Provisions

Constitutional provisions, statutes, provisions of the Charter of the City of Detroit and other authorities are set forth in an Appendix to this Brief, infra, pages 35 to 49.

ARGUMENT

1. THE LIEN HEREIN SOUGHT TO BE FORECLOSED IS IMPOSED BY *SECTION 3186 OF THE REVISED STATUTES (SECTIONS 3670 to 3677 OF THE INTERNAL REVENUE CODE).*

The history and construction of the Act and arguments relative thereto are set forth in the Brief filed by The Detroit Bank, A Michigan Banking Corporation, a co-petitioner. Therefore, petitioners will confine their argument to the priority of the lien of the United States of America over the liens of the State of Michigan, the County of Wayne and the City of Detroit for unpaid State, County or City real estate taxes.

I

NOTICE OF THE ALLEGED LIEN OF THE UNITED STATES GOVERNMENT DID NOT CONTAIN A DESCRIPTION OF THE PROPERTIES SOUGHT TO BE REACHED AND, THEREFORE, WAS NOT FILED AS REQUIRED BY THE STATUTES OF THE STATE OF MICHIGAN, AND IS, THEREFORE, INVALID AS AGAINST THE SPECIFIC AND COMPLETE TAX AND ASSESSMENT LIENS OF THE CITY OF DETROIT, COUNTY OF WAYNE AND STATE OF MICHIGAN.

Section 3746 *of the Compiled Laws of* 1929 *of the State of Michigan,* provides as follows:

> "That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan pursuant to

section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled 'Record of United States Tax Liens,' indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States."

In the case of the *United States vs. Maniaci, et al,* 36 Fed. Supp. 293, Judge Raymond held this statute valid and that the same required the notice of Federal tax liens to describe the land on which the lien is claimed. The lien in this case was an income tax lien but this Michigan statute applies with equal force to all Federal tax liens. Judge Raymond stated in his opinion, in part, at pages 394, 395, as follows:

"*Conclusions of Law*

1. Under the provisions of section 3186 of the Revised Statutes of the United States, as amended by act of May 29, 1928, section 613, 45 Stat. 875, 26 U.S.C.A. Int. Rev. Acts, page 461, it is provided that such liens shall not be valid as against any purchaser until notice thereof has been filed by the Collector in accordance with the law of the state in which the property subject to the lien is situated, whenever the state or territory has by law provided for the filing of such notice.

2. By Act No. 104 of the Public Acts of the State of Michigan for the year 1923, as amended by Act

No. 13 for the year 1925 (Sec. 3746 of the Compiled Laws of Michigan of 1929), the State of Michigan provided for the filing of notices of federal tax liens in the office of the Register of Deeds, pursuant to Sec. 3186 of the Revised Statutes of the United States, and thereby provided that the notice of lien should set forth among other things a description of the land upon which a lien is claimed. This statute was in effect at the time of the passage of the Act of May 29, 1928, and is valid.

3. Under the law of the United States, the Collector of Internal Revenue was required, in order to make the lien valid against defendant Shafer, to include in the notice of lien filed in the office of the Register of Deeds of Kent County, Michigan, a description of the land upon which the lien was claimed.

4. Defendant Shafer purchased said premises in good faith and without notice, at a time when there had been no proper filing of the notice of lien in the office of the Register of Deeds, and the lien for said taxes is therefore not valid as to defendant Wilmarth T. Shafer.

* * * * *

6. An order will be entered dismissing the bill of complaint."

This decision of Judge Raymond was affirmed by this Court in November of 1940 (116 Fed. (2d) 935).

There is no question but that the Federal Government failed to comply with the afore-quoted Michigan Statute in filing its notice of lien in December of 1935 and, therefore, the same is clearly void and of no force or effect and the bill of complaint should, for this reason alone, be dismissed.

II

REAL ESTATE TAX AND ASSESSMENT LIENS LEVIED BY THE CITY OF DETROIT, COUNTY OF WAYNE AND STATE OF MICHIGAN, ARE FIRST LIENS, PRIOR, SUPERIOR AND PARAMOUNT TO ANY OTHER LIEN OR ENCUMBRANCE.

Section 2 of Article X of the Constitution of the State of Michigan provides as follows:

> "The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of state government, the interest on any state debt and such deficiency as may occur in the resources." (Appendix, p. 40.)

The Constitution of the State of Michigan guarantees to cities the right to levy and collect taxes for the support of government (*Sections 20 and 25 of Article VIII, Appendix,* p. 40).

The Legislature, in the so-called Home Rule Bill, being Act No. 279 of the Public Acts of Michigan of 1909, as amended, made it mandatory for municipalities to provide in their charter for the annual levy of taxes (See *Section* 2230, *Compiled Laws of Michigan,* 1929, *Appendix,* pages 40, 41).

The Legislature has also enacted a so-called General State Tax Law. This law is made applicable in cities where it is not inconsistent with the charter provisions. (*Section* 3500, *Compiled Laws of Michigan,* 1929, *Appendix,* p. 42. See: *Detroit Shipbuilding Company v. City of Detroit,* 228 Mich. 145; *State Board of Tax Commissioners v. Board of Assessors,* 124 Mich. 491, 498.

Section 3429 *of the Compiled Laws of Michigan,* 1929 (*General State Tax Law*) as last amended by Act No. 19 *of the Extra Session of* 1934, provides as follows:

> "The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, *and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount,* on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, * * * " (Appendix, pp. 41, 42.)

It is apparent that *Section* 3429, *supra,* makes both real and personal property taxes levied by any unit of government in this State a first lien. The statement in *Section* 3429 *of the Compiled Laws* that "all personal taxes shall also be a first lien" means that all real estate taxes in addition to personal property taxes constitute a first lien upon the lands assessed inasmuch as the word "also" could only refer to taxes levied upon real estate. Taxes levied upon real estate have always, in this State, been first liens upon the property, superior to mortgage and other liens. At an early date the Supreme Court of the State of Michigan established this fundamental rule in the case of *Harrington v. Hilliard,* 27 *Mich.* 271, the Court saying in its opinion, at pages 275, 276, as follows:

> "* * * In other words, the proceedings from the valuation of the land and the imposition of the taxes till their final collection, have been in rem against the land itself, as well as against the owner or person taxed, if the latter were a resident. And no

express provision making the tax a lien was ever necessary under this system, to make it a lien, so far as the rights of the state or the public were concerned; as this was the necessary effect and direct result of the system itself. Nor was there ever a time in this state when the rights of the public or the state, to enforce a payment from the land itself was in any manner affected by the sale, or any number of sales of the land."

See, also: *Lindsay v. Eastwood,* 72 Mich. 336.

There is no provision in the Charter of the City of Detroit that is inconsistent with the provisions of the general tax law making real estate taxes a first lien. Therefore, in accordance with *Section* 3500 *of the Compiled Laws,* App. p. 42, real estate taxes levied by the City of Detroit constitute a first lien upon the lands assessed. There is no provision in the statute or charter that expressly or by implication would subordinate real estate taxes levied by the City of Detroit to taxes levied by any other unit of government in this State upon the same property.

The *Charter of the City of Detroit* provides *in Section* 1 *of Chapter IV of Title VI,* as follows:

"All city taxes shall be due and payable on the fifteenth day of July in each year, and on that date shall become a lien on the property taxed." * * *

Section 27 *of the same Chapter and Title* provides as follows:

"All city taxes upon personal property and real estate and special assessments thereon in addition to being a lien upon the property assessed shall become a debt against the owner from the time of the listing of the property for assessment, and shall remain a debt against the owner of the property or his estate after his death, until the same are paid."

The Supreme Court of this State recently held that the

tax lien of the City of Detroit has been accorded equality of effectiveness with state and county tax liens. In the case of *Hoffman v. Otto, et al,* 277 Mich. 437, the Court, in adjudicating the effect of a state and county tax title upon the tax interest of the City of Detroit in the same property, said in its opinion at pages 439, 440, as follows:

> "In behalf of the city it is contended that there is no superiority among the tax liens of the units of government of the State; that the tax lien of the city of Detroit is, by the Constitution and statutes, accorded equality of effectiveness with the lien for State and county taxes; that the sale of real estate for delinquent taxes by one unit of government is subject to the duly authorized tax lien of another unit of the government within the state, when the tax lien is possessed by the municipal unit, and that plaintiff's title, under the tax deed, did not and could not divest and destroy the tax liens of the city.
>
> Taxation is a power of sovereignty. The power may not be surrendered but, to the extent of public need, may be delegated to municipal power. When, for general municipal purposes, it is so delegated it is clothed with effectiveness and, unless carrying restrictions, serves with the sovereign power and is to be saved from defeat of such purpose if reasonably possible.
>
> The State, undoubtedly, could, by appropriate legislation, do the very thing claimed by plaintiff, but such legislation would have to be plainly expressed and cannot be accomplished by construction or implication.
>
> Our attention is not called to any such plainly expressed legislation."

Taxes upon real estate constitute a lien until paid. *Eaton v. Chesebrough,* 82 Mich. 214.

> "It is and always has been fundamental, in our revenue system, that a lien upon real estate exists

for the purpose of collecting taxes levied thereon. Change of ownership does not affect it."

Jacobs v. Union Trust Company, 185 Mich. 233, 236.

Taxes upon mortgaged lands in this State are as much a lien upon mortgage interests as upon the equity of redemption. *Horton v. Saunders,* 13 Mich. 409.

Real estate taxes are a lien upon the lands superior to mortgages. *Noeker v. Howry,* 119 Mich. 626.

The lien for taxes upon real estate continues until foreclosed. *Auditor General v. Carpenter,* 138 Mich. 669.

In the scheme for collecting taxes as provided by the Statutes of the State of Michigan and the Charter of the City of Detroit, each assessment constitutes a lien, until paid, upon the real estate assessed, which lien may be enforced by a sale of the property. *Woodmere Cemetery Association v. City of Detroit,* 192 *Mich.* 553, 559.

Real estate taxes in Michigan constitute an impost levied in support of government, a charge in rem but not in personam. In the case of *Schaefer v. Woodmere Cemetery Association,* 256 Mich. 332, 239 N.W. 300, the Treasurer of the City of Fordson, Michigan, brought suit in assumpsit to recover general city taxes and special paving assessments. The Court said in its opinion, at pp. 332, 333, in part, as follows:

"We are met by the question of the right of the plaintiff to maintain the suit.

'The only case provided for by statute wherein suit may be brought for unpaid taxes by the township is where taxes on personalty have been returned unpaid for want of property on which to levy. 1 Comp. Laws, 1871, sec. 1014. In such case the treasurer may sue in the name of the township. Taxes on real estate may be collected by distress on goods and

chattels (1 Comp. Laws 1871, sec. 1003), but if not so collected the tax is returned unpaid and the land sold to make it.' *Staley v. Township of Columbus*, 36 Mich. 38.

This is still the rule. It follows the suit in question will not lie. This question was raised on the argument and it goes to the jurisdiction of the court."

See also: *Grosse Ile Township v. New York Indemnity Company*, 260 Mich. 643, 245 N.W. 791, 86 A.L.R. 776.

Staley v. Columbus Township, 36 Mich. 38

It is apparent from the foregoing that in the State of Michigan suit cannot be brought to collect taxes and assessments upon real estate. If the United States Government's assertion in the case at bar of a superior lien is sustained, there is no manner in which payment of the city, county and state taxes and assessments can be secured.

There can be no question but that, by the statutory and common law of the State of Michigan, general tax and assessment liens are first and prior liens in the property.

III

THE ESTATE TAX LIEN OF THE UNITED STATES CONSTITUTES A GENERAL LIEN AGAINST THE REAL ESTATE OF THE DECEASED BUT SUCH LIEN HAS NOT BEEN MADE BY CONGRESS A LIEN PRIOR TO SPECIFIC AND COMPLETE TAX LIENS OF A STATE OR ITS SUBDIVISIONS, MADE FIRST LIENS BY STATE STATUTE.

Section 315 (*a*) provides, in part, as follows:

"Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent," * * *

Title 26, *U.S.C.A., Section* 427, *Appendix,* p. 35.

Section 3186 *of the Revised Statutes* provides, in part, as follows:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person"
>
> "(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor, until notice thereof has been filed by the collector."

U.S.C.A., Title 26, *Sections* 1560-1567, *Appendix,* pp. 35-38.

Petitioner, The Detroit Bank, argues with considerable force and conviction that Section 3186 applies to the lien claimed by the United States With this conclusion we agree. The language is clear and unambiguous; the section has application to "any person liable to pay any tax." The question of whether or not the appellee is bound by this section insofar as its claimed estate tax lien is concerned, is of extreme importance to the mortgage interests involved but is not decisive of the question of the priority of the Federal lien over the specific tax liens of these Petitioners levied for general property taxes.

Section 315 (*a*) and *Section* 3186 both provide for a lien upon all of the property of the decedent, resembling, in many respects, a mortgage. Congress has not fastened a lien upon any specific property nor has it declared it to be a first lien superior and paramount to general taxes constituting expressly a first lien upon specific property. Indeed, by *Section* 3186 the lien is made inferior to mortgage, purchaser and judgment liens until the requisite no-

tice has been filed by the Collector. This is the reverse of the statutory provision of the State of Michigan which makes real estate taxes a first lien on the property, prior, superior and paramount to mortgage liens or any other claim or encumbrance. (*Section* 3429, *Compiled Laws of Michigan,* 1929; Appendix, pp. 41, 42.) Congress could readily have declared the lien to be a first lien as it did in the instance of insolvency as provided by *Section* 3466 *of the Revised Statutes.* (*U.S.C.A. Title* 31, *Section* 191.) That Congress did not declare the estate tax lien to be a first lien and expressly made it paramount to specific first liens for the general taxes of a state and its subdivisions, is the determining factor in this case. We are assuming for the purpose of this argument, but not agreeing, that Congress would have the power to enact such legislation. Respondent assumes that the mere granting by Congress of a general lien upon "all property" without designation of priority is sufficient for its purpose. This assumption ignores fundamental and well established legal principles.

The right to priority in payment of taxes or imposts due to the Government is a prerogative of the crown, well established in the common law. Many states and their subdivisions have been held to possess this sovereign power which is not founded upon any personal advantage to the sovereign but upon sound reasons of public policy in order to assure an adequate revenue to support Government and to pay its debts. The claim of the United States cannot stand upon any sovereign prerogative but exists, if at all, wholly and entirely by statute, as the United States has no common law.

The Court said in its opinion in the case of *Equitable Trust Company v. Connecticut Brass and Manufacturing Corporation,* 290 Fed. 712, at page 716, as follows:

"We think it clear that whatever claim to priority

> the United States may assert does not rest upon the theory of sovereignty. * * * Whatever the rule may be in the several states, the question whether the United States has a common law of its own is quite a different matter. The Supreme Court has said on numerous occasions that there is no common law of the United States." * * *

And again at page 718, the Court said:

> "As the United States has no common law, whatever right of priority in the payment of debts the United States possesses over other creditors exists because of some statute which confers it. It does not exist independently of statute." * * *

In the case of *Wheaton v. Peters,* 8 L. Ed. 1055 (1834), the Court said in its opinion, at page 1080, as follows:

> "It is clear there can be no common law of the United States. The federal government is composed of twenty-four sovereign and independent states, each of which may have its local usages, customs and common law. There is no principle which pervades the union and has the authority of law that is not embodied in the constitution or laws of the union. The common law could be made a part of our federal system only by legislative adoption."

See, also: *Smith v. Alabama,* 124 U. S. 465, 31 L. Ed. 508.

THE GENERAL RULE IS THAT TAX LIENS HAVE ONLY PRIORITY EXPRESSLY ACCORDED THEM BY STATUTE.

The general rule is stated in 61 *C. J. p.* 926, *Section* 1178, as follows:

> "Whether or not the legislature has made the lien of taxes paramount must depend upon the construction of the particular statute; and the question of priority is one of legislative intent. Where the language of the statute is not positive, and its intent is not plain, it cannot be held to create a lien for

taxes superior to antecedent incumbrances; but, although a mere declaration that taxes shall be a lien does not itself show an intention that it shall occupy the paramount position, it is sufficient if the purpose of the legislature to make the tax lien paramount to all prior rights is clearly manifested, as where the statute provides that taxes shall remain a lien until they are paid in full."

In the case of *In re*: *Wyley Company,* 292 Fed. 900, the Court in its opinion, at pages 901-902, said as follows:

"Taxes due the United States for bankruptcies are alike wholly subject to the power of Congress. Congress may make such provisions for the payment of one through the other as it sees fit. A tax has such lien and priority and only such as is given it by statute. 37 Cyc. 1138, 1143. The common law preference of the sovereign is said not to exist in favor of the United States, save as conditioned by statutes. *United States v. Bank of North Carolina,* 6 Pet. 29, 8 L. Ed. 308. *A lien is provided for federal taxes by Revised Statutes* (*Comp. Stat. Sec.* 5908) *but no special priority is stated.* Debts due the United States are given a first priority, apparently extending to cases of bankruptcy by Revised Statutes, Section 3466 (Comp. Stat. Sec. 6372); but taxes are hardly to be considered debts (*New Jersey v. Anderson,* 203 U. S. 483, 492, 27 S. C. 137, 51 L. Ed. 284). * * * It is not competition here between any but tax liens. Considering the dual nature of our government, and that neither the Union nor the states may destroy or hinder the other in their several functions, and all have an equal need of their revenues, it is concluded that the intent of congress was that there should be a pro rata payment upon all the taxes named in section 64 (a), when the available fund is not sufficient to pay in full, the taxes due the United States having no priority over the others."

This has been the uniform interpretation of Section 64

(a) (U. S. C. A., Title 11, Section 104, Appendix, pp. 38, 39) of the *Bankruptcy Act*. See the following:

Re: *A. J. Waterman Manufacturing Company,* 291 Fed. 589;

Re: *A. É. Fountain,* 295 Fed. 873;

New Jersey v. Anderson, 203 U. S. 483, 51 L. Ed. 284, 27 S. C. 137;

United States Fidelity and Guaranty Co. v. Sweeney, 80 Fed. (2) 235;

State of Missouri v. Ross, 80 Fed. (2) 329;

Certiorari granted, 297 U. S. 702, 80 L. Ed. 991, 56 S. C. 669. Affirmed 299 U. S. 72, 81 L. Ed. 46, 57 S. C. 60.

The rule concerning the priority of taxes is stated in the case of In re: *Cutler and Horgen,* 234 N. W. 238, modified and rehearing denied 238 N. W. 80, 213 Ia. 983, at page 81 of the Northwestern Reporter, as follows:

> "Section 7205, Code 1927, makes such taxes a lien but does not give them priority. There can be no question that the legislature had the right to make taxes a paramount lien by so declaring by statute, but in the absence of such declaration, taxes declared to be a lien, are not a first lien. *Bibbins v. Clark,* 90 Ia. 230, 57 N. W. 884, 59 N. W. 390, 29 L. R. A. 278. The general subject is discussed and authorities collated in 37 Cyc. 1143, et seq."

The question of tax liens and their priority is for legislative determination.

People v. City and County of Denver, 85 Col. 61, 273 Pac. 883;

Elsner v. United American Utilities, 180 Atl. 589 (Del. Ch.).

Statutes will not be construed to make tax liens superior to prior mortgage liens, unless the legislative intent is clearly expressed.

Eagle Point Irrigation District v. Cowden, 137 Ore. 121, 1 Pac. (2) 605;

Home Owners Loan Corporation v. Mitchell, 81 Pac. (2) 268 (Wash.)

A state has undoubted power to create a priority of lien in aid of its tax power but such priority will not be indulged in unless sustained by some positive statute and will not be sustained by resort to construction.

Scandinavian American Bank v. King Company, 92 Wash. 650, 159 Pac. 786.

In the case of *Walker v. Nogales Building and Loan Association,* 28 Ariz. 484, 237 Pac. 1094, the rule is stated in the opinion at page 1096 of the Pac. Rep., as follows:

> " 'It is competent' however, according to 31 Cyc. 1143, 'for the legislature to make taxes a paramount lien on the property of the taxpayer, and this has been done in many states; the consequence being that the lien for taxes takes precedence over every other lien or claim upon the property of whatsoever kind, however created, and whether attaching before or after the assessment of taxes. But this preference does not belong to the tax lien unless it is so declared by statute, *and a law, for example, which merely enacts that taxes shall be a lien on real property, does not make them a first lien.*' See 26 *R. C. L.* 389; 27 *Am. & Eng. Enc. of Law* (2 Ed.) 741; 37 *Cyc.* 1145; *Miller v. Anderson,* 1 S. Dak. 539, 47 N. W. 957, 11 L. R. A. 317, *Cooley on Taxation,* 444."

There are several recent cases directly adjudicating the tax question involved in the case at bar. All of these cases involve an interpretation of *Section* 3186 *of the Revised Statutes.* Counsel for the Appellee take the position that

this statute does not apply. We do not agree with this conclusion, as previously stated, but the cases are clearly analogous regardless of the application of that section of the Statute because the nature of the lien imposed by *Section* 315 (*a*) and *Section* 3186 is practically identical. If anything, the position of the United States with relation to its priority over other encumbrances is somewhat stronger under *Section* 3186 than it is under *Section* 315 (*a*). *Section* 315 (*a*) merely provides that the tax "shall be a lien for ten years upon the gross estate of the decedent" without any designation of its priority or superiority whatever. *Subsection* (*b*) of *Section* 3186 provides that the lien imposed when "any person" neglects or refuses to pay "any tax" is valid against a mortgagee, purchaser or judgment creditor after notice thereof has been filed by the collector. (Appendix, pp. 35, 36, 37.)

There is no expression that such lien is at any time valid against or superior to the specific first lien for general taxes imposed by a state or its subdivisions. In interpreting the intent of Congress in these two sections of the statute, it is significant to compare them with the provisions of *Section* 3466 *of the Revised Statutes,* as previously pointed out, where in cases of insolvency "the debts due to the United States shall be *first* satisfied." If Congress had intended that the estate tax lien was to be a superior lien or was to be "first" satisfied, it could readily have so provided.

In the case of *Winston-Salem v. Powell Paving Company of North Carolina,* 7 Fed. Supp. 424, (1934), the District Court in proceedings for the sale of real estate to satisfy street assessments, taxes due the City, State and federal government had to determine the order of priority in the distribution of the proceeds of the sale. This decision was reversed in the case of *United States v. City of Greenville,* 111 Fed. (2nd) 963 (C.C.A. 4). The liens involved were

the following: Special assessment liens of the city for the years 1924 and 1925; general city tax liens, 1929 to 1933, inclusive; county tax liens for 1930 to 1933, inclusive; state income tax liens for 1928 and 1929; and United States income tax liens for 1926-1927, 1928-1929. The tax lien of the United States was held to be covered by *Section* 3186 *of the Revised Statutes.* The District Court, which in our opinion arrived at the correct conclusion, said in its opinion at page 427, as follows:

> "There is no state annual ad valorem tax involved in this suit. The state taxes which are involved are state income taxes. Therefore, the general taxes of the city and county, from 1929 to 1932, inclusive, are entitled to priority over all other liens, and the street assessments for 1924 and 1925 have priority over any of the other liens, except the general taxes. The state and federal tax liens attach in the order of their priority as set forth in the stipulated facts, to-wit: State income tax for 1928 attached March 15, 1929; for 1929, March 15, 1930; the income tax due the United States 1926-1927, attached April 29, 1930; for 1928-1929, on May 27, 1930. Both the state and federal statutes fail to make income tax liens prior to other tax liens. They become general liens against all real estate of the taxpayer according to the terms and limitations of the statutes, but the language used does not warrant the inference that the Legislature or Congress intended to make such a lien prior to general tax liens.
>
> The federal government contends that taxes due it have priority over a claim for taxes due the state, county, or city, relying, in part, on the authority of *New York v. Maclay,* 288 U. S. 290, 53 S. Ct. 323, 77 L. Ed. 754; *Spokane County v. United States,* 279 U. S. 80, 49 S. Ct. 321, 73 L. Ed. 621. These decisions came clearly within the provisions of 31 U.S.C.A. Sec. 191, Rev. St. sec. 3466. It confers priority to debts due the United States by one who is insolvent or where the debtor makes an assignment. The de-

cisions were based on the statute above mentioned. Since the facts in the instant case do not bring it within the provisions of this statute, the above authorities are inapplicable here.

Insolvency within the meaning of section 3466 must exist before this statute applies. *United States v. Oklahoma*, 261 U. S. 253, 43 S. Ct. 295, 297, 67 L. Ed. 638. In this case it is stated: 'The claim of the United States to the asserted priority rests exclusively upon the statute. No lien is created by it. * * * It establishes priority which is limited to the particular state of things specified.' *United States v. Oklahoma, Supra, Beaston v. Farmers' Bank*, 12 Pet. 102, 132, 9 L. Ed. 1017.

The priority is not an attribute of sovereignty, but depends on the acts of Congress. *United States v. Bank of North Carolina*, 6 Pet. 29, 30, 8 L. Ed. 308; *United States v. Middle States Oil Corp.* (C.C.A. Okl.) 18 F. (2d) 231, 57 A. L. R. 848.

The lien established by section 3186 is a general lien upon all property of the taxpayer, and resembles, in many respects, a mortgage. While it is a lien, it is not necessarily to be preferred over any other lien. The government had not fastened a lien on any specific property; nor does it appear that there is no other property out of which the tax can be paid. If the government had sold the property for taxes in 1930, the date of its lien, the state tax which attached first, the county and municipal tax 1929, and street assessments, and the judgment would have been paid before the federal tax, or the property would have been sold subject to them. The land would have been taxed for general taxes in favor of the city and county, for 1930 and 1931 and 1932. Are these local groups to be deprived of the tax thus subsequently accruing if the government did not sell the property in 1930? It does not appear reasonable that Congress intended such a result. Since the lien is general and not specific, and expressly attempts the lien 'as against any mortgagee,

purchaser, judgment creditor until notice has been filed by the collector,' it would appear that the lien, from the time of notice, operates as a mortgage or judgment lien, subject to enforcement by the government if it elects to enforce it. Congress could have provided here, as it did in section 3466, that the lien is to be paid first, but if does not do so.

Having made the provision in the one and refrained from it in the other, the inference is that no such priority was intended.

The property in this suit should be sold and the proceeds applied in accordance with the rights of the claimants when the proceeding was instituted, for neither party could act after that, except on the orders of the court. Applying this rule, the proceeds will be applied: First, to the annual general taxes of the city and county for the years 1929 to 1932, inclusive; second, the street assessments; third, the judgment; fourth, the state taxes; fifth, the government taxes."

The case of *Berrymount Land Company v. Davis Creek Land and Coal Company,* 192 S. E. 577, decided by the Supreme Court of Appeals of the State of West Virginia (1937) followed the *Winston-Salem case, supra,* and arrived at the same conclusion. The question in controversy was the proper disposition of a fund in the possession of the Court that had been realized from the sale of real estate. The fund was claimed by the United States government and the State of West Virginia under tax liens asserted by each of them—the lien of the United States was claimed by virtue of an unpaid income tax lien and that of the State for real estate taxes extending over a period of several years. Title to the land in question had vested in the State because of the delinquent taxes. In the case at bar the property had been bid in by the State for State and County taxes and by the City of Detroit by reason of the municipal tax delinquency. The Court, in this

case, said in its opinion, at page 597 of the S. E. Rep. as follows:

> "Furthermore, the right of the state to collect property taxes on its domain for its own support, and that of its governmental subdivisions, seems inherently necessary for its preservation. If the Federal government may assert its power over the State's domain, to the extent of enforcing a lien for taxes to the exclusion of the state's power of taxation thereon, then the integrity of the state government is seriously affected, for, as has been held, 'the power to tax is the power to destroy.'"
>
> * * *

And at page 580:

> "It is difficult to believe that the Congress, in enacting Section 3186, which by its terms protects the rights of purchasers and lienors prior to the filing of liens by the collector, thereby evincing its intent to make such liens subject to equitable rules, had any thought of asserting the same to the prejudice of the states and their local subdivisions, in the collection of taxes vitally necessary to their continued maintenance."

In the case of *United States v. Woodside*, 34 Fed. Supp. 281, certain real estate was sold and the proceeds of the sale paid in to the Clerk of the Court until the order of priority of the general city, county and state tax liens and the income tax lien of the United States had been determined. The income tax lien of the Federal Government became effective May 20, 1930. The lien for City, State and County taxes, together with some special assessments for paving owing to the City of Greenville, S. C., carried through the year 1939. The Federal Government in this case, as in the case at bar, relied to a large extent upon the cases of the *People of the State of New York vs. Maclay*, 288 U. S. 290, and *Spokane County v. United States*, 279 U. S. 80. The District Court in its opinion in this case

followed the decision in the case of *City of Winston-Salem v. Powell Paving Company*, 7 Fed. Supp. 424, supra, stating its conclusion, in part, as follows (page 283):

> "The Government relies largely on the cases of the *People of the State of New York v. Maclay*, 288 U. S. 290, 53 S. Ct. 323, 77 L. Ed. 754; *Exchange National Bank of Spokane v. United States*, 147 Wash. 176, 265 P. 722, 62 A. L. R. 139; *Spokane County v. United States*, 279 U. S. 80, 49 S. Ct. 321, 73 L. Ed. 621. These cases are distinguishable from the case at bar, but it is noteworthy that they involve the distribution of the creditors' assets, and only personal properties were involved in the Spokane County cases, and the taxes levied were in personam and not in rem; and further, they recognize the preference of perfected or specific liens even in the distribution of an insolvent's property by a receivership. Here, we have no legal or administrative distribution of the debtors' entire assets, either as a bankrupt, insolvent or otherwise."

The Court found that the income tax lien of the United States was a general lien, having no priority over other tax liens, whereas the City, State and County general tax liens were expressly made first liens. The Government in this case made no effort to enforce its income tax lien for a period of approximately 10 years. It is significant to note that in the case at bar the foreclosure proceedings were instituted just one day prior to the expiration of the period of 10 years from the time the alleged estate lien attached to the property. The Court in this *Woodside case* concluded its opinion as follows (p. 284):

> "The regularity or legality of the liens for paving assessments due the City of Greenville, or the taxes due to it and the county, is not questioned, and it is not disputed that the properties are properly listed with the auditor and duly assessed for taxation. The unpaid taxes on the properties involved arose and were subsequent to May 20, 1930, but said assess-

ments in all instances, except one or two of minor importance, were made against these properties while in the possession of other owners to whom the tax debtors had conveyed the same. For some reason the Government for many years made no effort to enforce its income tax lien against these properties, and in the meantime some of the properties were specifically assessed for paving improvements, and taxes were assessed in favor of the county and the city against said properties, and it would be inequitable in the circumstances to deny to these political units the right to collect their taxes in the face of the Government's unexplained long delay, and in the face of the fact that the paving assessments were legally made against some of the properties which became specific liens. The paving assessments against two of the John T. Woodside lots in the City of Greenville were assessed in 1939, and the paving assessments as against the Robert I. Woodside properties were assessed in 1929, prior to the origin of the Government's general lien for unpaid income taxes.

The paving assessments due and payable to the City of Greenville were authorized by Article X, Section 14 of the 1895, S. C. Constitution, as amended, and given active force by the provisions of the Enabling Acts of the State Legislature and the Ordinances of the City of Greenville, S. C. Such paving assessments are recognized as a form of tax given rank superior to that of mortgages by a holding of the S. C. Supreme Court in the case of *Beatty v. Wittekamp,* 171 S. C. 326, 172 S. E. 122.

After most careful consideration of the questions involved in this matter, the court concludes that the state and county taxes due and payable to Greenville County should first be paid out of the proceeds of sale in each case, which proceeds are in the hands of the officials of this court; that there should next be paid from such proceeds in each case the paving assessments and taxes due and owing to the City of Greenville, S. C., and that the remaining funds in

each case should be applied toward the payment of the income tax liens of the United States of America."

These cases are the only adjudications that we have been able to find involving the question herein presented, are extremely well reasoned, and do, we believe, result in a sound and logical conclusion. We have been unable to find any adjudications to the contrary—the courts have consistently held the opposite to the decision of the District Court here.

In the case of *In re Howell and King Co.*, 16 Fed. Supp. 984, the District Court held that State, county and local taxes, which were made first liens by State laws, were required to be paid first from funds of the bankrupt estate, but the tax due to the United States would not be paid as a lien claim where notice of the lien had not been filed. The Court in this case also followed the decision in the case of *Winston-Salem v. Powell Paving Company*, 7 Fed. Supp. 424, *supra*.

In the case of *City of Walla Walla v. State*, 85 Pac. (2) 676, 119 A. L. R. 1327, the Supreme Court of the State of Washington held that an inheritance tax lien was subordinate to general ad valorem tax liens upon real estate, the Court saying in its opinion, at page 678 of the Pac. Rep. in part as follows:

"The general ad valorem tax upon real property lies at the foundation of the tax structure of the state, and its paramount lien is, in concept, well nigh traditional. Such tax is imposed directly upon property and exacted from all owners thereof. It is levied annually, at a regular time, and operates uniformly according to fixed general rules. In reliance upon the comparative certainty of its collection, public officials administer the affairs of state. That this tax be promptly and fully collected is of supreme and vital importance to the people of the commonwealth.

The inheritance tax, on the other hand, is not a property tax, but a special tax imposed upon the individual for the enjoyment of the privilege of receiving property on the death of the owner. It did not become a part of our tax system until 1901. Laws of 1901, chapter 55, page 67. Such tax does not operate uniformly, and the total annual revenue therefrom cannot be predicted with any degree of certainty. Although it is a valuable auxiliary to the general tax, there is no gauge by which its ultimate contribution can be measured. It is not a sure foundation upon which the inexorable and recurring demands of safe government and public need can rest.

There can be no doubt that the legislature has always, in enacting the various tax statutes, had these differences in mind. It must also have had in mind the difference between merely establishing a lien for a tax and fixing priority between various tax liens. To insure the collection of the inheritance tax, the legislature has provided that such tax 'shall be and remain a lien on such estate from the death of the decedent until paid.' Laws of 1901, Chapter 55, Section 1, page 67; Rem. Rev. Stat. Section 11201. But, on the subject of priority of liens, it has said, since 1891, with reference to general taxes on real property, that the lien for such taxes 'shall have priority to and shall be fully paid and satisfied before any * * * deed, obligation or liability to or with which said real property may become charged or liable'."

CONGRESS IS NOT EMPOWERED TO ENACT LEGISLATION THAT WOULD MAKE UNITED STATES TAX LIENS SUPERIOR TO SPECIFIC AND COMPLETE TAX LIENS OF THE STATES AND THEIR SUBDIVISIONS.

Ad valorem taxation of real and personal property is the principal source of revenue for the support of state and local units of government. This source of revenue is

the tax base, the very foundation of these many units of government. Does Congress possess the power to invade this source in enforcing the payment of its taxes by asserting a priority resulting in the destruction of the tax interest of the states and their political subdivisions? Since Justice Marshall's early declaration that "the power to tax is the power to destroy," this principle has been in force in this country. Have the people by the Constitution vested in Congress the power to destroy the states? To ask the question is to answer it. The seriousness of this problem becomes apparent when consideration is given to the ever increasing Federal taxes at the present time and the obviously necessary additional expansion of this field in the future to retire the rapidly increasing Federal debt.

The draftsmen of the Constitution created a federated republic composed originally of thirteen sovereign states. The states delegated to the national government certain powers, reserving all other powers to themselves or to the people. It was never intended to make the states completely subordinate to the United States. The states reserved to themselves all the attributes of sovereignty which they did not delegate to the Federal Government. On the contrary the United States was not intended to be subordinate to the States and from the time of the famous case of *McCulloch vs. Maryland,* 4 Wheat. 316, 4 L. Ed. 479, to the present time this system of dual sovereignty has been recognized by the courts.

The states have never been subject to the taxing jurisdiction of Congress. They are independent sovereignties. In the case of *Ohio Life Insurance and Trust Company v. DeBolt,* 16 How. 230, the Supreme Court of the United States said:

> "It will be admitted on all hands that with the exception of the power surrendered by the constitution of the United States, the people of the several

states are absolutely and unconditionally sovereign within their respective territories."

Have the states surrendered to the Federal Government the power to deprive the states of the foundation of their source of revenue? We think not. The Supreme Court anticipated this problem when they were concerned with the priority accorded by Congress in Section 3466 of the Revised Statutes (Brief, p. 33).

In the cases of *Spokane County et al v. United States*, 279 U. S. 80, 73 L. Ed. 621; and *People of the State of New York v. Maclay*, 77 L. Ed. 754, 53 S. Ct. 326, 288 U. S. 290, relied upon by appellee, the Supreme Court expressly reserved decision upon the question of priority of a United States tax claim over a specific and completed tax lien of a State or its political subdivisions. These cases will be discussed in detail subsequently in this brief.

In the case of *Lane County v. Oregon*, 74 U. S. 71, 19 L. Ed. 101, the Supreme Court in its opinion, at page 104 of the L. Ed. Rep., said:

> "The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each state compose a state, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without the States in union there could be no such political body as the United States.
>
> Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a National Government, acting, with ample power, directly upon the citizens, instead of the Confederate Government, which acted with powers, greatly restricted, only upon the States. But in

many articles of the Constitution the necessary existence of the States and, within their proper spheres, the independent authority of the States, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the National Government are reserved. The general condition was well expressed by Mr. Madison in the Federalist, thus: 'The Federal and State Governments are, in fact, but different agents and trustees of the people, constituted with different powers and designated for different purposes.'

Now, to the existence of the States, themselves, necessary to the existence of the United States, the power of taxation is indispensable. It is an essential function of government." * * * "*In respect, however,* to property, business and persons, within their respective limits, their (the states) power of taxation remained and remains entire." * * *

(Note: The italicizing throughout this Brief is ours.)

CONCLUSION

The tax and assessment liens of the City of Detroit, County of Wayne and State of Michigan, are by Michigan law, complete, specific and superior to any other claim or encumbrance upon the property. The estate tax lien of the United States is a general lien which has not nor could it be accorded by Congress, a priority over specific tax liens of a state and its subdivisions. The rule as enunciated by the Supreme Court of the United States in 1828 in the case of *Conard v. Atlantic Insurance Company of New York*, 1 Pet. 386, 7 L. Ed. 189, is still the law:

> * * * "But it has never yet been decided by this court that the priority of the United States will divest a specific lien attached to a thing, whether it be accompanied by possession or not." * * *

The collection of real estate taxes by the City and County provides the source of revenue through which the political subdivisions are able to exist. The future cannot help but show an increased number of Federal tax liens and many will undoubtedly find their way into the Courts for adjudication. The question of priority of liens before the Court in this case which is vital to petitioners does not appear to have been decided by our Supreme Court and at present there is a conflict in decisions rendered in various jurisdictions, which lends to confusion.

We respectfully submit that the writ of certiorari should be granted as prayed in our petition.

Respectfully submitted,

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APPENDIX

STATUTES, ETC.

FEDERAL STATUTES

Sec. 315 (*a*) *U.S.C.A. Title* 26, *Sec.* 427:

(a) UPON GROSS ESTATE. Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate releasing any or all property of such estate from the lien herein imposed. (Feb. 26, 1926, c. 27, § 315 (a), 44 Stat. 80; May 29, 1928, c. 852, § 613 (b), 45 Stat. 876; June 6, 1932, c. 209, § 809, 47 Stat. 283.)

Sec. 3186 *R. S., U. S. C. A. Title* 26, *Sec.* 1560-1567:

Sec. 1560. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (R. S. § 3186; May 29, 1928, c. 852, § 613, 45 Stat. 875.)

Sec. 1561. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was

received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (R. S. § 3186, May 29, 1928, c. 852, § 613, 45 Stat. 875.)

Sec. 1562. Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(a) In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(b) In the office of the Clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(c) In the office of the Clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia. (R. S. § 3186; May 29, 1928, c. 852, § 613, 45 Stat. 875.)

Sec. 1563. Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

(b) There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regu-

lations. (R. S. § 3186; May 29, 1928, c. 852, § 613, 45 Stat. 876.)

Sec. 1564. (a) Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876).

(b) Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States. (R. S. §3186; May 10, 1934, 11:40 a.m., c. 277, §509, 48 Stat. 757).

Sec. 1565. A certificate of release or of partial discharge issued under this sub-chapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876).

Sec. 1566. The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of

a single bond complying both with the requirements of section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of sub-section (b) of section 1563. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876.)

Sec. 1567. Sections 1563, 1564 (a), 1565, and 1566 shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this sub-chapter. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876.)

Sec. 64a, U.S.C.A. Title 11; Sec. 104:

Sec. 104. DEBTS WHICH HAVE PRIORITY.

(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district or municipality, in the order of priority as set forth in paragraph (b) hereof: Provided, That no order shall be made for the payment of a tax assessed against real estate of a bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court. Upon filing the receipts of the proper public officers for such pyments the trustee shall be credited with the amounts thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

(b) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable

expense of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fees, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary and involuntary cases, as the court may allow; (4) where the confirmation of composition terms has been refused or set aside upon the objection and through the efforts and at the expense of one or more creditors, in the discretion of the court, the reasonable expenses of such creditors in opposing such composition; (5) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of the proceedings, not to exceed $600 to each claimant; (6) taxes payable under paragraph (a) hereof and (7) debts owing to any person who by the laws of the States or the United States is entitled to priority: Provided, That the term "person" as used in this section shall include corporations, the United States and the several States and Territories of the United States.

(c) In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication. (July 1, 1898, c. 541, sec. 64, 30 Stat. 563; Feb. 5, 1903, c. 487, §14, 32 Stat. 800; June 15, 1906, c. 3333, 34 Stat. 267; May 27, 1926, c. 406, §15, 44 Stat. 666.)

CONSTITUTION OF MICHIGAN

Sections 20 and 25 of Article VIII:

Sec. 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.

Sec. 25. No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any city or village acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village voting thereon at a regular or special municipal election; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote.

Section 2 of Article X:

Sec. 2. The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of state government, the interest on any state debt and such deficiency as may occur in the resources.

STATUTES OF MICHIGAN

Sections 2230, 3429, 3500 *and* 3746, *Compiled Laws,* 1929:

Section 2230. (Sec. 3). Each city charter shall provide:

(f) That the subjects of taxation for municipal purposes shall be the same as for state, county and school purposes under the general law;

* * * * *

(i) For the levy, collection and return of state, county and school taxes in conformity with the general laws of the state, except that the preparation of the assessment roll, the meeting of the board of review, and the confirmation of the assessment roll may be at such times as shall be provided in the city charter;"

* * * * *

Sec. 3429. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances cre-

ated by chattel mortgage, title retaining contract, execution or upon any other final process of a court attachment, replevin, judgment, or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided, any provisions in the charter of such cities to the contrary notwithstanding.

Section 3500. (Sec. 107). This act shall be applicable to all cities and villages where not inconsistent with their respective charters." * * * * *

* * * * *

Section 3746. (Sec. 1.) That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty

(50) cents for such notice, file and index the same in a separate book, entitled "'Record of United States Tax Liens,'' indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States.

CHARTER CITY OF DETROIT

Sections 10 *and* 21, *Chapter IV, Title VI (Old Charter)*:

Sec. 10. On completion of the list contained in the sales books, the city treasurer shall cause a notice to be published in the official daily newspaper for the city, once a week for four successive weeks, and posted in three or more public places in each assessment district. Such notice shall require the owners or occupants of, or parties interested in such lands, tenements, hereditaments or premises, to pay such assessment or tax. Such notice shall state that if default be made in making such payment, such real estate will be sold at public auction, at a day and place to be specified in said notice, for the lowest term of years at which any person shall offer to take the same in consideration of advancing and paying such assessment or tax, with the additions provided in this chapter, and the cost and expenses of advertising.

Sec. 21. It shall be the duty of the controller to bid in for the city, for a term of ninety-nine years, at any sale of real estate for assessments or taxes, every lot of land or premises for which no person shall offer to bid. If any purchaser shall refuse or neglect to pay the sum or sums bid by him, within the time and under the regulations prescribed by the common council, such bids shall inure to the use and benefit of the city, if the council shall so determine. Upon all such bids certificates of sale may be exe-

cuted by the controller to the city attested by the city clerk and acknowledged in the same manner as provided in other cases of sale for assessment or taxes. In all cases of sales for special assessments the property so bid in for the city may at the option of the council be held in trust for the person or contractor in whose behalf such assessment shall have been made, or his assignee, or upon payment to such person or contractor of the amount for w' ich such property shall have been bid in, the city may, as in case of the general tax, become the owner of the tax title or lease thus obtained and may dispose of the same as if obtained under a like sale for any general tax.

Sections 9, 10, 11, 18, 19 *and* 21, *Chapter IV, Title VI, (new charter)*:

Sec. 9. As soon as necessary each year before the annual sale the city treasurer shall in the column provided in the tax rolls list the amount of the unpaid real estate taxes as augmented. The total of the augmented tax with interest as herein provided in section eight (8) shall thereafter be the amount required to be paid for the tax on any description before the sale, as herein provided. In the tax rolls there shall also be a column in which the Treasurer shall enter the name of the purchaser of any description when the same shall have been sold.

Sec. 10. On completion of the list contained in the tax rolls of the unpaid taxes as augmented the city treasurer shall cause one notice to be published in a daily newspaper of general circulation in the City of Detroit, and posted in three or more public places in each assessment district. Such notice shall be published at least thirty days prior to the date of the sale and the newspaper notice shall contain a description of the property upon which the unpaid tax or assessment constitutes a lien, but need not contain the name of the owner of such property, or person

obligated to pay such tax or assessment, or the amount of such tax or assessment. Such notice shall state that if default be made in making such payments, the lien of the city and the liability for such tax or assessment will be sold to the city of Detroit or, if provided by resolution of the Common Council, at public auction to the highest bidder, but not for less than the amount of said tax or assessment, interest and penalty thereon, on the second Tuesday in June of that year at the office of the city treasurer and continuing daily thereafter until all descriptions are offered. Following the publication of such notice containing a description of the property upon which the unpaid tax or assessment constitutes a lien, a notice shall be published once a week for four successive weeks in a daily newspaper of general circulation in the city of Detroit stating the date of the sale of the tax or assessment lien and advising that a copy of the list of descriptions of property involved in the same may be obtained at the office of the city treasurer.

Sec. 11. If the owner or occupant of, or parties in interest in such real estate, do not pay such assessment o tax, with costs, additions and charges within the period herein prescribed, then the city treasurer shall without further notice cause the lien of the city and the liability for such tax or assessment to be sold to the city of Detroit by bid of the controller unless provided by resolution of the common council that the same shall be sold at auction to the highest bidder thereof, but in either case the sale shall be for not less than the amount of said tax, interest and penalties thereon. The purchaser shall be required to pay to the city treasurer the amount of all previous bids then held by the city together with such interest and penalty from the time of such previous sale as the council shall direct: Provided, that such interest shall not exceed the amount as provided in section eight hereof or as pro-

vided in section seventeen hereof if more than two years have elapsed from and after the date of such previous sale. Should any such tax lien be sold for an amount over and above the tax liability with all interest and penalty thereon such excess shall be returned to the owner of the property on which such tax or assessment liability constitutes a lien, or the person liable for the payment of such tax or assessment by the treasurer or in the event of a dispute concerning the person entitled thereto, the same shall be paid by the treasurer to the person or persons held by a court of competent jurisdiction to be entitled to such excess. (As amended October 8, 1935. In effect October 15, 1935.

Sec. 18. Should such tax lien and liability be still unpaid two years succeeding the date of its sale, the holder thereof (including the City of Detroit acting by its controller), in addition to such other remedies as may exist or be given by law, shall have the right, then or at any time thereafter, to file in the circuit court of Wayne County a bill in chancery to foreclose same. The holder of several tax liens on the same or different parcels of real estate may file a single bill in chancery to foreclose the liens on the parcel or several parcels of real estate subject thereto. Such bill and the procedure thereon shall conform to the law in respect to foreclosure in chancery of liens on real estate other than mortgage or other liens having special statutory provisions applicable thereto. Costs, including attorney fees, against either party may be fixed in the bill in chancery to foreclose the liens on the several parcels of real estate subject thereto. Upon the filing of such bill the court shall issue summons or other process for appearance as in other chancery cases or in lieu thereof either or both may make and enter an order for appearance against all defendants or several orders for appearances against different groups of defendants arranged as may be convenient

and such order or orders shall be published or served (if there shall be more than one order one or more may be served and one or more published), as provided by law in case of absent defendants and if published a copy thereof shall in addition be sent by registered mail with the postage thereon fully prepaid to the last known address of the person or persons appearing by the records in the office of the register of deeds of the County of Wayne to be the latest grantee or grantees in the regular chain of title of such lands or of any interest therein at the date of the filing of such bill of complaint and to the person or persons, if any there be, in the actual open possession of such parcel of land at the date aforesaid, and to the holder of record of any tax lien for the latest year's taxes then appearing of record in the office of the city treasurer or latest deed conveying title derived from such tax lien appearing of record in the office of the register of deeds and to the mortgagee or mortgagees named in all undischarged recorded mortgages or to any assignee or assignees thereof of record at the date aforesaid and to the holder of record of all undischarged record liens. The decree in such suit, if in favor of the holder of the tax lien, shall provide that possession of the premises subject thereto shall forthwith be given to him, unless the amount of the decree and all costs be paid within sixty days from its date, and shall award to the plaintiff a writ of assistance and any other process requisite to obtain possession. The decree shall not be entered before the expiration of one hundred and twenty days from the filing of the bill. There shall be no redemption period under such decree beyond said sixty days. Appeal may be taken on such degree in the same manner as an appeal is taken in other chancery cases, but an appeal as to the lien on any parcel or by any defendant shall not affect the proceedings on any other parcel or defendant as to which there has been no appeal. The decree, if in

favor of the plaintiff and if it is not paid within said sixty days and if there is no appeal, shall be conclusive as to the title and right of possession of the plaintiff, and shall direct the controller to execute and deliver a deed in appropriate form to the plaintiff which shall vest in the plaintiff absolute title in fee as against all persons claiming estate or interest whether arising or existing prior to the time such tax first became a lien or subsequent thereto; Provided that any state or county taxes or assessments that have been bid to the state or remain unpaid in the office of the auditor-general or county treasurer whether the lien for such taxes or assessments became a lien prior to or subsequent to the tax lien under foreclosure, estates or interests arising from taxes or assessments becoming a lien subsequent to the lien under foreclosure on the property described in such deed, and any restrictions in respect of building or use in common with other property in the immediate neighborhood, shall not be affected by such sale foreclosure and deed.

If the court in such procedure to foreclose the tax or assessment lien shall find or if appeal is taken and it is determined that the sale of the same to the purchaser (other than the City of Detroit by bid of the controller), was void, the City of Detroit shall refund to the purchaser thereof the amount of his bid together with interest thereon at the rate of five per cent. per annum. (As amended Oct. 10, 1933. In effect Oct. 16, 1933.)

Sec. 19. The real estate deeded to the city under a foreclosure of its tax lien may be used by the city for municipal purposes or may be leased, sold, conveyed, transferred or disposed of by the common council or the lease, sale, conveyance, transfer or disposal of such real estate may be authorized by the common council under such terms and conditions as they may prescribe. (As amended Oct. 10, 1933. In effect Oct. 16, 1933.)

Sec. 21. At every sale it shall be the duty of the city controller to bid in for the city, at the amount thereof, the tax lien on every parcel of land or premises sold, except those parcels offered for sale at public auction to the highest bidder as provided by resolution of the common council which parcels shall also be bid in by the controller, if no person shall make a bid for the same. Upon all such bids by the controller certificates of sale may be executed by the treasurer to the city and acknowledged in the same manner as provided herein in other cases of sale. The city shall have all the rights and remedies herein given to private purchasers of tax liens. In all cases of sales for special assessments the lien so bid in for the city may at the option of the council be held in trust for the person or contractor in whose behalf such assessment shall have been made, or by his assignee, or upon payment to such person or contractor of the amount for which such lien shall have been bid in, the city may, as in the case of the general tax, become the owner of the tax lien and may dispose of the same as if obtained under a like sale for any general tax. All tax liens, bid in by the city, shall be payable at any time before foreclosure thereof upon the payment of the amount of the tax with interest and penalties as provided in sections sixteen and seventeen hereof. (As amended October 8, 1935. In effect October 15, 1935.)

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IN THE

Supreme Court of the United States

October Term, 1942

No. 214

STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a corporate body politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a municipal corporation, and ALBERT E. COBO, Treasurer of the City of Detroit,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

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IN THE

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OCTOBER TERM, 1942

No. 214

STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a Corporate Body Politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a Municipal Corporation, and ALBERT E. COBO, Treasurer of the City of Detroit, *Petitioners*,

v.

THE UNITED STATES OF AMERICA, *Respondent.*

Brief for Petitioners, *City of Detroit*, a Municipal Corporation, and *Albert E. Cobo*, Treasurer of the City of Detroit; *County of Wayne*, a Corporate Body Politic, *Jacob P. Sumeracki*, Treasurer for the County of Wayne; and *State of Michigan, John J. O'Hara*, Auditor General for the State of Michigan.

Official Reports of Opinions Rendered in the Courts Below

The opinion of the District Court (R. 229-243) is reported in 41 *Fed. Supp.* 41.

The opinion of the Circuit Court of Appeals (R. 292-296) is reported in 127 *Fed.* (2*nd*) 64.

Statements of Grounds on Which Jurisdiction of Supreme Court is Invoked

Certiorari granted October, 1942, and jurisdiction invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938; 28 U. S. C. 347 (a).

Statement of Case

The facts in this matter have, for the most part, been stipulated (R. pp. 100-130-F). The undisputed facts, in so far as they pertain to these Appellants, are as follows:

John P. Paul, a resident of Detroit, Michigan, died intestate, on May 5, 1926 (R. p. 102). On July 5, 1927, Lena Paul, as beneficiary of the estate of John P. Paul, executed and filed in the office of the collector of Internal Revenue, at Detroit, a Federal estate tax return for the estate of John P. Paul, deceased, reflecting a tax liability of $3,450.00, which was duly paid (R. pp. 102, 103). On March 14, 1930, the Commissioner of Internal Revenue notified Lena Paul of a proposed deficiency in Federal estate tax in the sum of $23,271.84, and advised her of her right to file an appeal with the United States Board of Tax Appeals within sixty days from the receipt of such notice (R. p. 103). Pursuant to that notice and to the rights given under the statute, Lena Paul, as beneficiary of the estate of John P. Paul, deceased, filed an appeal before the United States Board of Tax Appeals on May 10, 1930, seeking a reduction of the proposed deficiency (R. p. 103). On November 4, 1932, the United States Board of Tax Appeals entered an order in that proceeding determining that there was an estate tax deficiency due to the United States in the sum of $23,271.84. No appeal was taken from this decision (R. p. 103).

On February 19, 1933, pursuant to the Statutes and Regulations, the Commissioner of Internal Revenue duly assessed against the estate of John P. Paul, deceased, a deficiency in Federal estate taxes in the principal amount of $23,271.84, together with interest thereon in the sum of $8,080.28. No part of the deficiency or interest has ever been paid (R. pp. 103, 104).

At the time of the death of John P. Paul, he, together with his wife, Lena Paul, owned as tenants by the entirety, or held land contracts as tenants by the entirety, on all the parcels of real estate described in the bill of complaint, except parcels 40 to 47, inclusive, as numbered in the bill of complaint. Parcels 40 to 47, inclusive, had been owned by John P. Paul and Lena Paul, his wife, as tenants by the entirety, but less than two years prior to the death of John P. Paul, these parcels had been conveyed without consideration to the Petitioners, Nettie B. Paul and Amelia L. Paul, daughters of the decedent (R. p. 104). By deeds dated February 13, 1931, reciting a consideration of love and affection, Lena Paul, widow of John P. Paul, conveyed all her right, title and interest in and to any and all real estate standing in her name in Wayne County, Michigan, to her children, John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul and Charles P. Paul. There have been mesne conveyances by the children of various parcels of real estate, but none of the real estate described in the bill of complaint has been sold to persons outside of the Paul Family (R. pp. 105, 106).

These Petitioners will omit from this Statement of Facts any statement concerning the mortgage interest of the Petitioner, The Detroit Bank, as the same will be set forth in detail in its brief.

There were City, State and County taxes and assessments due and unpaid at the time the stipulation was

signed, in 1938, on the following parcels: 2(a), 3, 5, 6, 8, 12-19, 21-30, 33, 34, 35, 36, 37, 39, 44-50. These taxes, at the time of the filing of the stipulation of facts amounted to a sum in excess of $70,000.00 (R. pp. 115-129). The latest year's taxes listed in the stipulation of facts were for the year 1937, as taxes for the year 1938 and subsequent years became a lien subsequent to the filing of this stipulation. The real estate in question has been assessed each year so that the taxes involved at the present time amount to a sum considerably in excess of that included in the stipulation filed in July of 1938.

Except as otherwise indicated in the stipulation of facts, the taxes for the years 1930 to 1935, inclusive, due to the State of Michigan and the County of Wayne, were bid in by the State of Michigan on May 3, 1938. The amount of the bid, as shown in the stipulation of facts, bears interest at the rate of 1 per cent per month until paid. Taxes for the years 1936 and 1937, due to the State of Michigan and the County of Wayne, bear interest at the rate of ¾ths of 1 per cent per month from March 1st of the year following the year in which the same became due and payable, in addition to a 4 per cent flat collection fee imposed after January 1st of the year following the taxable year.

Except as otherwise indicated in the stipulation of facts, taxes for all years (including 1937) due to the City of Detroit have been bid in by the City on June 1st of the year following the taxable year. The amount of the City bid, as shown in the stipulation of facts, bears interest at the rate of 8 per cent per annum. All unpaid special assessments due and owing the City of Detroit were bid in by the City and the amount of the bid, as shown in the stipulation of facts, bears interest at the rate of 10 per cent per annum from the date of said bid. The tax and assessment interest of the City of Detroit is confined to the year 1929 and subsequent years. The property upon which

the City of Detroit has a tax and assessment interest for the years 1929 to 1932, inclusive, was bid in by the City of Detroit for the term of 99 years, in June of the year following that in which the tax became due and payable. (Charter of the City of Detroit, Sections 10 and 21, Chapter IV, Title VI, Appendix to Brief, p. 52). The Charter of the City of Detroit was amended in October, 1933, effective with the sale of the 1933 taxes in June, 1934. The unpaid tax lien for the year 1933 and subsequent years was bid in by the City of Detroit in June of the year following that in which the tax became due and payable. Such liens bid in by the City may be foreclosed two years following the sale, which foreclosure proceedings will result in the vesting of absolute title in the City of Detroit if the tax obigation is not paid in the meantime. (See Charter of the City of Detroit, Chapter IV, Title VI, Sections 9, 10, 11, 18, 19 and 21. Appendix to Brief, pp. 53-57).

The notice of the Respondent's tax lien was filed with the Register of Deeds, Wayne County, Michigan, on January 2, 1936, in Lien 5162, dated December 26, 1935 and in the amount of $31,352.12 (R. Exhibit 2, pp. 208-210). This notice did not contain a description of the property upon which the lien was claimed. Notice of the lien was also filed with the Clerk of the District Court on December 30, 1935 (R. Exhibit 1, pp. 206, 207).

Taxes due to the City of Highland Park and the School District of Highland Park are subject to a charge of 1 per cent per month from August 15th to March 1st of the year following the taxable year. On March 1st, the unpaid tax, plus accrued charges of 1 per cent per month, are returned to the County Treasurer. Thereafter the composite amount of city and school taxes, together with the charges, bears interest at the same rate as the County and State taxes, as stated above (R. pp. 114, 115).

Specification of Errors Relied on

The Circuit Court of Appeals erred in the following respects:

1. In affirming the Decree of the District Court.
2. In determining that the lien asserted by the United States was paramount to the lien of the State of Michigan, the County of Wayne and the City of Detroit, even though recorded after the vesting of the lien by the political subdivisions.
3. In determining that the lien referred to in *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Sec.* 427 (*a*) *of the Internal Revenue Code*) is separate and distinct from that imposed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

Reference to Statutory Provisions

Constitutional provisions, statutes, provisions of the Charter of the City of Detroit and other authorities are set forth in an Appendix to this Brief, infra, pages 45 to 57.

Question Presented

The question involved, insofar as these Petitioners are concerned, is whether the alleged lien of the United States for estate taxes is subordinate to the specific lien for taxes and assessments imposed by the City of Detroit, County of Wayne, and State of Michigan, and made by the Constitution and statutes of the State of Michigan and the Charter of the City of Detroit, a first lien, prior, superior and paramount to any other lien.

ARGUMENT

The history and construction of the Act and arguments relative thereto are set forth in the Brief filed by The Detroit Bank, A Michigan Banking Corporation, a co-petitioner. Therefore, petitioners will confine their argument to the priority of the lien of the United States of America over the liens of the State of Michigan, the County of Wayne and the City of Detroit for unpaid State, County or City real estate taxes.

I

Notice of the Alleged Lien of the United States Government did not Contain a Description of the Properties Sought to be Reached and, Therefore, Was not Filed as Required by the Statutes of the State of Michigan, and is, Therefore, Invalid as Against the Specific and Complete Tax and Assessment Liens of the City of Detroit, County of Wayne and State of Michigan.

Section 3746 *of the Compiled Laws of* 1929 *of the State of Michigan,* provides as follows:

> "That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan pursuant to section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land

upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled 'Record of United States Tax Liens,' indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States."

In the case of *United States vs. Maniaci et al,* 36 Fed. Supp. 293, Judge Raymond held this statute valid and that the same required the notice of Federal tax liens to describe the land on which the lien is claimed. The lien in this case was an income tax lien but this Michigan statute applies with equal force to all Federal tax liens. Judge Raymond stated in his opinion, in part, at pages 394, 395, as follows:

"Conclusions of Law

1. Under the provisions of section 3186 of the Revised Statutes of the United States, as amended by act of May 29, 1938, section 613, 45 Stat. 875, 26 U.S.C.A. Int. Rev. Acts, page 461, it is provided that such liens shall not be valid as against any purchaser until notice thereof has been filed by the Collector in accordance with the law of the state in which the property subject to the lien is situated, whenever the state or territory has by law provided for the filing of such notice.

2. By Act No. 104 of the Public Acts of the State of Michigan for the year 1923, as amended by Act No. 13 for the year 1925 (Sec. 3746 of the Compiled Laws of Michigan of 1929), the State of Michigan provided for the filing of notices of federal tax liens in the office of the Register of Deeds, pursuant to Sec. 3186 of the Revised Statutes of the United

States, and thereby provided that the notice of lien should set forth among other things a description of the land upon which a lien is claimed. This statute was in effect at the time of the passage of the Act of May 29, 1928, and is valid.

3. Under the laws of the United States, the Collector of Internal Revenue was required, in order to make the lien valid against defendant Shafer, to include in the notice of lien filed in the office of the Register of Deeds of Kent County, Michigan, a description of the land upon which the lien was claimed.

4. Defendant Shafer purchased said premises in good faith and without notice, at a time when there had been no proper filing of the notice of lien in the office of the Register of Deeds, and the lien for said taxes is therefore not valid as to defendant Wilmarth T. Shafer.

* * * * *

6. An order will be entered dismissing the bill of complaint."

This decision of Judge Raymond was affirmed by the Circuit Court of Appeals for the Sixth Circuit in November of 1940 (116 Fed. (2) 935).

There is no question but that the Federal Government failed to comply with the afore-quoted Michigan Statute in filing its notice of lien in December of 1935 and, therefore, the same is clearly void and of no force or effect and the bill of complaint should, for this reason alone, be dismissed.

II

Real Estate Tax and Assessment Liens Levied by the City of Detroit, County of Wayne and State of Michigan, are First Liens, Prior, Superior and Paramount to Any Other Lien or Encumbrance.

Section 2 of Article X of the Constitution of the State of Michigan provides as follows:

> "The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of state government, the interest on any state debt and such deficiency as may occur in the resources." (Appendix, p. 49).

The Constitution of the State of Michigan guarantees to cities the right to levy and collect taxes for the support of government (*Sections 20 and 25 of Article VIII, Appendix, p. 49*).

The Legislature, in the so-called Home Rule Bill, being Act No. 279 of the Public Acts of Michigan of 1909, as amended, made it mandatory for municipalities to provide in their charter for the annual levy of taxes (See *Section* 2230, *Compiled Laws of Michigan*, 1929, *Appendix*, page 50).

The Legislature has also enacted a so-called General State Tax Law. This law is made applicable in cities where it is not inconsistent with the charter provisions. (*Section* 3500, *Compiled Laws of Michigan*, 1929, *Appendix*, p. 51. See: *Detroit Shipbuilding Company v. City of Detroit*, 228 Mich. 145; *State Board of Tax Commissioners v. Board of Assessors*, 124 Mich. 491, 498.

Section 3429 *of the Compiled Laws of Michigan*, 1929 *(General State Tax Law)* as last amended by Act No. 19 *of the Extra Session of* 1934, provides as follows:

"The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, *and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all* personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, * * * " (Appendix, p. 50).

It is apparent that *Section* 3429, *supra,* makes both real and personal property taxes levied by any unit of government in this State a first lien. The statement in *Section* 3429 *of the Compiled Laws* that "all personal taxes shall also be a first lien" means that all real estate taxes in addition to personal property taxes constitute a first lien upon the lands assessed inasmuch as the word "also" could only refer to taxes levied upon real estate. Taxes levied upon real estate have always, in this State, been first liens upon the property, superior to mortgage and other liens. At an early date the Supreme Court of the State of Michigan established this fundamental rule in the case of *Harrington v. Hilliard,* 27 Mich. 271, the Court saying in its opinion, at pages 275, 276, as follows:

"* * * In other words, the proceedings from the valuation of the land and the imposition of the taxes till their final collection, have been in rem against the land itself, as well as against the owner or person taxed, if the latter were a resident. And no

> express provision making the tax a lien was ever necessary under this system, to make it a lien, so far as the rights of the state or the public were concerned; as this was the necessary effect and direct result of the system itself. Nor was there ever a time in this state when the rights of the public or the state, to enforce a payment from the land itself was in any manner affected by the sale, or any number of sales of the land."

See, also: *Lindsay v. Eastwood*, 72 Mich. 336.

There is no provision in the Charter of the City of Detroit that is inconsistent with the provisions of the general tax law making real estate taxes a first lien. Therefore, in accordance with *Section* 3500 *of the Compiled Laws*, App. p. 51, real estate taxes levied by the City of Detroit constitute a first lien upon the lands assessed. There is no provision in the statute or charter that expressly or by implication would subordinate real estate taxes levied by the City of Detroit to taxes levied by any other unit of government in this State upon the same property.

The *Charter of the City of Detroit* provides in *Section* 1 *of Chapter IV of Title VI*, as follows:

> "All city taxes shall be due and payable on the fifteenth day of July in each year, and on that date shall become a lien on the property taxed." * * *.

Section 27 *of the same Chapter and Title* provides as follows:

> "All city taxes upon personal property and real estate and special assessments thereon in addition to being a lien upon the property assessed shall become a debt against the owner from the time of the listing of the property for assessment, and shall remain a debt against the owner of the property or his estate after his death, until the same are paid."

The Supreme Court of this State recently held that the tax lien of the City of Detroit has been accorded equality of effectiveness with state and county tax liens. In the case of *Hoffman v. Otto, et al*, 277 Mich. 437, the Court, in adjudicating the effect of a state and county tax title upon the tax interest of the City of Detroit in the same property, said in its opinion at pages 439, 440, as follows:

> "In behalf of the city it is contended that there is no superiority among the tax liens of the units of government of the State; that the tax lien of the city of Detroit is, by the Constitution and statutes, accorded equality of effectiveness with the lien for State and county taxes; that the sale of real estate for delinquent taxes by one unit of government is subject to the duly authorized tax lien of another unit of the government within the state, when the tax lien is possessed by the municipal unit, and that plaintiff's title, under the tax deed, did not and could not divest and destroy the tax liens of the city.
>
> Taxation is a power of sovereignty. The power may not be surrendered but, to the extent of public need, may be delegated to municipal power. When, for general municipal purposes, it is so delegated it is clothed with effectiveness and, unless carrying restrictions, serves with the sovereign power and is to be saved from defeat of such purpose if reasonably possible.
>
> The State, undoubtedly, could, by appropriate legislation, do the very thing claimed by plaintiff, but such legislation would have to be plainly expressed and cannot be accomplished by construction or implication.
>
> Our attention is not called to any such plainly expressed legislation."

Taxes upon real estate constitute a lien until paid. *Eaton v. Chesebrough,* 82 Mich. 214.

> "It is and always has been fundamental, in our revenue system, that a lien upon real estate exists for the purpose of collecting taxes levied thereon. Change of ownership does not affect it."
>
> *Jacobs v. Union Trust Company,* 185 Mich. 233, 236.

Taxes upon mortgaged lands in this State are as much a lien upon mortgage interests as upon the equity of redemption. *Horton v. Saunders,* 13 Mich. 409.

Real estate taxes are a lien upon the lands superior to mortgages. *Noeker v. Howry,* 119 Mich. 626.

The lien for taxes upon real estate continues until foreclosed. *Auditor General v. Carpenter,* 138 Mich. 669.

In the scheme for collecting taxes as provided by the Statutes of the State of Michigan and the Charter of the City of Detroit, each assessment constitutes a lien, until paid, upon the real estate assessed, which lien may be enforced by a sale of the property. *Woodmere Cemetery Association v. City of Detroit,* 192 Mich. 553, 559.

Real estate taxes in Michigan constitute an impost levied in support of government, a charge in rem but not in personam. In the case of *Schaefer v. Woodmere Cemetery Association,* 256 Mich. 332, 239 N.W. 300, the Treasurer of the City of Fordson, Michigan, brought suit in assumpsit to recover general city taxes and special paving assessments. The Court said in its opinion, at pp. 332, 333, in part, as follows:

> "We are met by the question of the right of the plaintiff to maintain this suit.
>
> 'The only case provided for by statute wherein suit may be brought for unpaid taxes by the town-

ship is where taxes on personalty have been returned unpaid for want of property on which to levy. 1 Comp. Laws, 1871, sec. 1014. In such case the treasurer may sue in the name of the township. Taxes on real estate may be collected by distress on goods and chattels (1 Comp. Laws 1871, sec. 1003), but if not so collected the tax is returned unpaid and the land sold to make it.' *Staley v. Township of Columbus,* 36 Mich. 38.

This is still the rule. It follows the suit in question will not lie. This question was raised on the argument and it goes to the jurisdiction of the court.''

See also: *Grosse Ile Township v. New York Indemnity Company,* 260 Mich. 643, 245 N.W. 791, 86 A.L.R. 776.

Staley v. Columbus Township, 36 Mich. 38.

It is apparent from the foregoing that in the State of Michigan suit cannot be brought to collect taxes and assessments upon real estate. If the United States Government's assertion in the case at bar of a superior lien is sustained, there is no manner in which payment of the city, county and state taxes and assessments can be secured.

There can be no question but that, by the statutory and common law of the State of Michigan, general tax and assessment liens are first and prior liens in the property.

III

The Estate Tax Lien of the United States Constitutes a General Lien Against the Real Estate of the Deceased but such Lien has not been made by Congress a Lien Prior to Specific and Complete Tax Liens of a State or its Subdivisions, Made First Liens by State Statute.

Section 315 (*a*) provides, in part, as follows:

> "Unless the tax is sooner paid in full, it shall be *a lien for ten years upon the gross estate of the decedent,*" * * *

Title 26, *U.S.C.A., Section* 427, *Appendix. p.* 45.

Section 3186 *of the Revised Statutes* provides, in part, as follows:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) *shall be a lien in favor of the United States upon all property and rights to property,* whether real or personal, belonging to such person."
>
> "(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor, until notice thereof has been filed by the collector."

U.S.C.A., Title 26, *Sections* 1560-1567, *Appendix,* pp. 45-47.

Appellant, The Detroit Bank, argues with considerable force and conviction that Section 3186 applies to the lien claimed by the United States. With this conclusion we agree. The language is clear and unambiguous; the section has application to "any person liable to pay any

tax." The question of whether or not the appellee is bound by this section insofar as its claimed estate tax lien is concerned, is of extreme importance to the mortgage interests involved but is not decisive of the question of the priority of the Federal lien over the specific tax liens of these Petitioners levied for general property taxes.

Section 315 (*a*) and *Section* 3186 both provide for a lien upon all of the property of the decedent, resembling, in many respects, a mortgage. Congress has not fastened a lien upon any specific property nor has it declared it to be a first lien superior and paramount to general taxes constituting expressly a first lien upon specific property. Indeed, by *Section* 3186 the lien is made inferior to mortgage, purchaser and judgment liens until the requisite notice has been filed by the Collector. This is the reverse of the statutory provision of the State of Michigan which makes real estate taxes a first lien on the property, prior, superior and paramount to mortgage liens or any other claim or encumbrance. (*Section* 3429, *Compiled Laws of Michigan,* 1929; *Appendix,* pp. 50-51). Congress could readily have declared the lien to be a first lien as it did in the instance of insolvency as provided by *Section* 3466 *of the Revised Statutes.* (*U.S.C.A. Title* 31, *Section* 191, Brief, p. 35.) That Congress did not declare the estate tax lien to be a first lien and expressly make it paramount to specific first liens for the general taxes of a state and its subdivisions, is the determining factor in this case. We are assuming for the purpose of this argument, but not agreeing, that Congress would have the power to enact such legislation. Appellee assumes that the mere granting by Congress of a general lien upon "all property" without designation of priority is sufficient for its purpose. This assumption ignores fundamental and well established legal principles.

The right to priority in payment of taxes or imposts due to the Government is a prerogative of the crown, well established in the common law. Many states and their subdivisions have been held to possess this sovereign power which is not founded upon any personal advantage to the sovereign but upon sound reasons of public policy in order to assure an adequate revenue to support Government and to pay its debts. The claim of the United States cannot stand upon any sovereign prerogative but exists, if at all, wholly and entirely by statute, as the United States has no common law.

The Court said in its opinion in the case of *Equitable Trust Company v. Connecticut Brass and Manufacturing Corporation*, 290 Fed. 712, at page 716, as follows:

> "We think it clear that whatever claim to priority the United States may assert does not rest upon the theory of sovereignty. * * * Whatever the rule may be in the several states, the question whether the United States has a common law of its own is quite a different matter. The Supreme Court has said on numerous occasions that there is no common law of the United States." * * *.

And again at page 718, the Court said:

> "As the United States has no common law, whatever right of priority in the payment of debts the United States possesses over other creditors exists because of some statute which confers it. It does not exist independently of statute." * * *.

In the case of *Wheaton v. Peters*, 8 L. Ed. 1055 (1834), the Court said in its opinion, at page 1080, as follows:

> "It is clear there can be no common law of the United States. The federal government is composed of twenty-four sovereign and independent states, each of which may have its local usages, customs

and common law. There is no principle which pervades the union and has the authority of law that is not embodied in the constitution or laws of the union. The common law could be made a part of our federal system only by legislative adoption."

See, also: *Smith v. Alabama*, 124 U. S. 465, 31 L. Ed. 508.

The General Rule is that Tax Liens have only Priority Expressly Accorded them by Statute.

The general rule is stated in 61 *C. J., p.* 926, *Section* 1178, as follows:

"Whether or not the legislature has made the lien of taxes paramount must depend upon the construction of the particular statute; and the question of priority is one of legislative intent. Where the language of the statute is not positive; and its intent is not plain, it cannot be held to create a lien for taxes superior to antecedent incumbrances; but, although a mere declaration that taxes shall be a lien does not itself show an intention that it shall occupy the paramount position, it is sufficient if the purpose of the legislature to make the tax lien paramount to all prior rights is clearly manifested, as where the statute provides that taxes shall remain a lien until they are paid in full."

In the case of *In re*: *Wyley Company*, 292 Fed. 900, the Court in its opinion, at pages 901-902, said as follows:

"Taxes due the United States for bankruptcies are alike wholly subject to the power of Congress. Congress may make such provisions for the payment of one through the other as it sees fit. A tax has such lien and priority and only such as is given it by statute. 37 Cyc. 1138, 1143. The common law preference of the sovereign is said not to exist in favor of the United States, save as conditioned by statutes.

> *United States v. Bank of North Carolina,* 6 Pet. 29, 8 L. Ed. 308. *A lien is provided for federal taxes by Revised Statutes (Comp. Stat. Sec. 5908) but no special priority is stated.* Debts due the United States are given a first priority, apparently extending to cases of bankruptcy by Revised Statutes, Section 3466 (Comp. Stat. Sec. 6372); but taxes are hardly to be considered debts (*New Jersey v. Anderson,* 203 U. S. 483, 492, 27 S. C. 137, 51 L. Ed. 284). * * * It is not competition here between any but tax liens. Considering the dual nature of our government, and that neither the Union nor the states may destroy or hinder the other in their several functions, and all have an equal need of their revenues, it is concluded that the intent of congress was that there should be a pro rata payment upon all the taxes named in section 64 (a), when the available fund is not sufficient to pay in full, the taxes due the United States having no priority over the others."

This has been the uniform interpretation of Section 64 (a) (U. S. C. A., Title 11 Section 104, Appendix, pp. 47-48) of the *Bankruptcy Act.* See the following:

> Re: *A. J. Waterman Manufacturing Company,* 291 Fed. 589;
>
> Re: *A. E. Fountain,* 295 Fed. 873;
>
> *New Jersey v. Anderson,* 203 U. S. 483, 51 L. Ed. 284, 27 S. C. 137;
>
> *United States Fidelity and Guaranty Co. v. Sweeney,* 80 Fed. (2) 235;
>
> *State of Missouri v. Ross,* 80 Fed. (2) 329;
>
> Certiorari granted, 297 U. S. 702, 80 L. Ed. 991, 56 S. C. 669. Affirmed 299 U. S. 72, 81 L. Ed. 46, 57 S. C. 60.

The rule concerning the priority of taxes is stated in the case of In re: *Cutler and Horgen,* 234 N. W. 238, modi-

fied and rehearing denied 238 N. W. 80, 213 Ia. 983, at page 81 of the Northwestern Reporter, as follows:

> "Section 7205, Code 1927, makes such taxes a lien but does not give them priority. There can be no question that the legislature had the right to make taxes a paramount lien by so declaring by statute, but in the absence of such declaration, taxes declared to be a lien, are not a first lien. *Bibbins v. Clark,* 90 Ia. 230, 57 N. W. 884, 59 N. W. 390, 29 L. R. A. 278. The general subject is discussed and authorities collated in 37 Cyc. 1143, et seq."

The question of tax liens and their priority is for legislative determination.

> *People v. City and County of Denver,* 85 Col. 61, 273 Pac. 883;
>
> *Elsner v. United American Utilities,* 180 Atl. 589 (Del. Ch).

Statutes will not be construed to make tax liens superior to prior mortgage liens, unless the legislative intent is clearly expressed.

> *Eagle Point Irrigation District v. Cowden,* 137 Ore. 121, 1 Pac. (2) 605;
>
> *Home Owners Loan Corporation v. Mitchell,* 81 Pac. (2) 268 (Wash.).

A state has undoubted power to create a priority of lien in aid of its tax power but such priority will not be indulged in unless sustained by some positive statute and will not be sustained by resort to construction.

> *Scandinavian American Bank v. King Company,* 92 Wash. 650, 159 Pac. 786.

In the case of *Walker v. Nogales Building and Loan Association,* 28 Ariz. 484, 237 Pac. 1094, the rule is stated in the opinion at page 1096 of the Pac. Rep., as follows:

> " 'It is competent' however, according to 31 Cyc. 1143, 'for the legislature to make taxes a paramount lien on the property of the taxpayer, and this has been done in many states; the consequence being that the lien for taxes takes precedence over every other lien or claim upon the property of whatsoever kind, however created, and whether attaching before or after the assessment of taxes. But this preference does not belong to the tax lien unless it is so declared by statute, *and a law, for example, which merely enacts that taxes shall be a lien on real property, does not make them a first lien.*' See 26 *R. C. L.* 389; 27 *Am. & Eng. Enc. of Law* (2 Ed.) 741; 37 *Cyc.* 1145; *Miller v. Anderson,* 1 S. Dak. 539, 47 N. W. 957, 11 L. R. A. 317. *Cooley on Taxation,* 444."

There are several recent cases directly adjudicating the tax question involved in the case at bar. All of these cases involve an interpretation of *Section* 3186 *of the Revised Statutes.* Counsel for the Appellee take the position that this statute does not apply. We do not agree with this conclusion, as previously stated, but the cases are clearly analogous regardless of the application of that section of the Statute because the nature of the lien imposed by *Section* 315 (*a*) and *Section* 3186 is practically identical. If anything, the position of the United States with relation to its priority over other encumbrances is somewhat stronger under *Section* 3186 than it is under *Section* 315 (*a*). *Section* 315 (*a*) merely provides that the tax "shall be a lien for ten years upon the gross estate of the decedent" without any designation of its priority or superiority whatever. *Sub-section* (*b*) *of Section* 3186 provides thta the lien imposed when "any person" neglects or refuses to pay "any tax" is valid against a mortgagee,

purchaser or judgment creditor after notice thereof has been filed by the collector. (Appendix, p. 44).

There is no expression that such lien is at any time valid against or superior to the specific first lien for general taxes imposed by a state or its subdivisions. In interpreting the intent of Congress in these two sections of the statute, is it significant to compare them with the provisions of *Section* 3466 (Brief p. 33) *of the Revised Statutes,* as previously pointed out, where in cases of insolvency "the debts due to the United States shall be *first* satisfied." If Congress had intended that the estate tax lien was to be a superior lien or was to be "first" satisfied, it could readily have so provided.

In the case of *Winston-Salem v. Powell Paving Company of North Carolina,* 7 Fed. Supp. 424, 1934), the District Court in proceedings for the sale of real estate to satisfy street assessments, taxes due the City, state and federal government had to determine the order of priority in the distribution of the proceeds of the sale. The liens involved were the following: Special assessment liens of the city for the years 1924 and 1925; general tax liens, 1929 to 1933, inclusive; county tax liens for 1930 to 1933, inclusive; state income tax liens for 1928 and 1929; and United States income tax liens for 1926-1927, 1928-1929. The tax lien of the United States was held to be covered by Section 3186 of the Revised Statutes. The Court said in its opinion at page 427, as follows:

> "There is no state annual ad valorem tax involved in this suit. The state taxes which are involved are state income taxes. Therefore, the general taxes of the city and county, from 1929 to 1932, inclusive, are entitled to priority over all other liens, and the street assessments for 1924 and 1925 have priority over any of the other liens, except the general taxes. The state and federal tax liens attach in the order of

their priority as set forth in the stipulated facts, to-wit: State income tax for 1928 attached March 15, 1929; for 1929, March 15, 1930; the income tax due the United States 1926-1927, attached April 29, 1930; for 1928-1929, on May 27, 1930. Both the state and federal statutes fail to make income tax liens prior to other tax liens. They become general liens against all real estate of the taxpayer according to the terms and limitations of the statutes, but the language used does not warrant the inference that the Legislature or Congress intended to make such a lien prior to general tax liens.

The federal government contends that taxes due it have priority over a claim for taxes due the state, county, or city, relying, in part, on the authority of *New York v. Maclay,* 288 U. S. 290, 53 S. Ct. 323, 77 L. Ed. 754; *Spokane County v. United States,* 279 U. S. 80, 49 S. Ct. 321, 73 L. Ed. 621. These decisions came clearly within the provisions of 31 U.S.C.A. Sec. 191, Rev. St. sec. 3466. It confers priority to debts due the United States by one who is insolvent or where the debtor makes an assignment. The decisions were based on the statute above mentioned. Since the facts in the instant case do not bring it within the provisions of this statute, the above authorities are inapplicable here.

Insolvency within the meaning of section 3466 must exist before this statute applies. *United States v. Oklahoma,* 261 U. S. 253, 43 S. Ct. 295, 297, 67 L. Ed. 638. In this case it is stated: 'The claim of the United States to the asserted priority rests exclusively upon the statute. No lien is created by it. * * * It establishes priority which is limited to the particular state of things specified.' *United States v. Oklahoma, Supra, Beaston v. Farmers' Bank,* 12 Pet. 102, 132, 9 L. Ed. 1017.

The priority is not an attribute of sovereignty, but depends on the acts of Congress. *United States v. Bank of North Carolina,* 6 Pet. 29, 30, 8 L. Ed. 308; *United States v. Middle States Oil Corp.* (C.C.A. Okl.) 18 F. (2d) 231, 57 A. L. R. 848.

The lien established by section 3186 is a general lien upon all property of the taxpayer, and resembles, in many respects, a mortgage. While it is a lien, it is not necessarily to be preferred over any other lien. The government had not fastened a lien on any specific property; nor does it appear that there is no other property out of which the tax can be paid. If the government had sold the property for taxes in 1930, the date of its lien, the state tax which attached first, the county and municipal tax 1929, and street assessments, and the judgment would have been paid before the federal tax, or the property would have been sold subject to them. The land would have been taxed for general taxes in favor of the city and county, for 1930 and 1931 and 1932. Are these local groups to be deprived of the tax thus subsequently accruing if the government did not sell the property in 1930? It does not appear reasonable that Congress intended such a result. Since the lien is general and not specific, and expressly exempts the lien 'as against any mortgagee, purchaser, judgment creditor until notice has been filed by the collector,' it would appear that the lien, from the time of notice, operates as a mortgage or judgment lien, subject to enforcement by the government if it elects to enforce it. Congress could have provided here, as it did in section 3466, that the lien is to be paid first, but it does not do so.

Having made the provision in the one and refrained from it in the other, the inference is that no such priority was intended.

The property in this suit should be sold and the proceeds applied in accordance with the rights of the claimants when the proceeding was instituted, for neither party could act after that, except on the orders of the court. Applying this rule, the proceeds will be applied: First, to the annual general taxes of the city and county for the years 1929 to 1932, inclusive; second, the street assessments; third, the judgment; fourth, the state taxes; fifth, the government taxes."

The case of *Berrymount Land Company v. Davis Creek Land and Coal Company*, 192 S. E. 577, decided by the Supreme Court of Appeals of the State of West Virginia (1937) followed the *Winston-Salem case, supra,* and arrived at the same conclusion. The question in controversy was the proper disposition of a fund in the possession of the Court that had been realized from the sale of real estate. The fund was claimed by the United States government and the State of West Virginia under tax liens asserted by each of them — the lien of the United States was claimed by virtue of an unpaid income tax lien and that of the State for real estate taxes extending over a period of several years. Title to the land in question had vested in the State because of the delinquent taxes. In the case at bar the property has been bid in by the State for State and County taxes and by the City of Detroit by reason of the municipal tax delinquency. The Court, in this case, said in its opinion, at page 579 of the S. E. Rep. as follows:

> "Furthermore, the right of the state to collect property taxes on its domain for its own support, and that of its governmental subdivisions, seems inherently necessary for its preservation. If the Federal government may assert its power over the State's domain, to the extent of enforcing a lien for taxes to the exclusion of the state's power of taxation thereon, then the integrity of the state government is seriously affected, for, as has been held, 'the power to tax is the power to destroy.'"
>
> * * *

And at page 580:

> "It is difficult to believe that the Congress, in enacting Section 3186, which by its terms protects the rights of purchasers and lienors prior to the filing of liens by the collector, thereby evincing its intent to make such liens subject to equitable rule,

had any thought of asserting the same to the prejudice of the states and their local subdivisions, in the collection of taxes vitally necessary to their continued maintenance."

In the case of *United States v. Woodside,* 34 Fed. Supp. 281, certain real estate was sold and the proceeds of the sale paid in to the Clerk of the Court until the order of priority of the general city, county and state tax liens and the income tax lien of the United States had been determined. The income tax lien of the Federal Government became effective May 20, 1930. The lien for City, State and County taxes, together with some special assessments for paving owing to the City of Greenville, S. C., carried through the year 1939. The Federal Government in this case, as in the case at bar, relied to a large extent upon the cases of the *People of the State of New York v. Maclay,* 288 U. S. 290, and *Spokane County v. United States,* 279 U. S. 80. The District Court in its opinion in this case followed the decision in the case of *City of Winston-Salem v. Powell Paving Company,* 7 Fed. Supp. 424, supra, stating its conclusion, in part, as follows (page 283):

"The Government relies largely on the cases of the *People of the State of New York v. Maclay,* 288 U. S. 290, 53 S. Ct. 323, 77 L. Ed. 754; *Exchange National Bank of Spokane v United States,* 147 Wash. 176, 265 P. 722, 62 A. L. R. 139; *Spokane County v. United States,* 279 U. S. 80, 49 S. Ct. 321, 73 L. Ed. 621. These cases are distinguishable from the case at bar, but it is noteworthy that they involve the distribution of the creditors' assets, and only personal properties were involved in the Spokane County cases, and the taxes levied were in personam and not in rem; and further, they recognize the preference of perfected or specific liens even in the distribution of an insolvent's property by a receivership. Here, we have no legal or administrative distribution of the debtors' entire assets, either as a bankrupt, insolvent or otherwise."

The Court found that the income tax lien of the United States was a general lien, having no priority over other tax liens, whereas the City, State and County general tax liens were expressely made first liens. The Government in this case made no effort to enforce its income tax lien for a period of approximately 10 years. It is significant to note that in the case at bar the foreclosure proceedings were instituted just one day prior to the expiration of the period of 10 years from the time the alleged estate lien attached to the property. The Court in this *Woodside case* concluded its opinion as follows (p. 284):

> "The regularity or legality of the liens for paving assessments due the City of Greenville, or the taxes due to it and the county, is not questioned, and it is not disputed that the properties are properly listed with the auditor and duly assessed for taxation. The unpaid taxes on the properties involved arose and were subsequent to May 20, 1930, but said assessments in all instances, except one or two of minor importance, were made against these properties while in the possession of other owners to whom the tax debtors had conveyed the same. For some reason the Government for many years made no effort to enforce its income tax lien against these properties, and in the meantime some of the properties were specifically assessed for paving improvements, and taxes were assessed in favor of the county and the city against said properties, and it would be inequitable in the circumstances to deny to these political units the right to collect their taxes in the face of the Government's unexplained long delay, and in the face of the fact that the paving assessments were legally made against some of the properties which became specific liens. The paving assessments against two of the John T. Woodside lots in the City of Greenville were assessed in 1939, and the paving assessments as against the Robert I. Woodside properties were assessed in 1929, prior to the

origin of the Government's general lien for unpaid income taxes.

The paving assessments due and payable to the City of Greenville were authorized by Article X, Section 14 of the 1895, S. C. Constitution, as amended, and given active force by the provisions of the Enabling Acts of the State Legislature and the Ordinances of the City of Greenville, S. C. Such paving assessments are recognized as a form of tax given rank superior to that of mortgages by a holding of the S. C. Supreme Court in the case of *Beatty v. Wittekamp,* 171 S. C. 326, 172 S. E. 122.

After most careful consideration of the questions involved in this matter, the court concludes that the state and county taxes due and payable to Greenville County should first be paid out of the proceeds of sale in each case, which proceeds are in the hands of the officials of this court; that there should next be paid from such proceeds in each case the paving assessments and taxes due and owing to the City of Greenville, S. C., and that the remaining funds in each case should be applied toward the payment of the income tax liens of the United States of America."

The *Woodside case* was reversed by the Fourth Circuit Court of Appeals in *United States vs. City of Greenville,* 118 Fed. (2d) 963. The Greenville opinion questioned the decisions in the *Winston-Salem* and *Berrymont cases.* We submit, however, that the reasoning in the two latter cases presents a closer and deeper study of the problem and should be sustained. We submit, further, that the Greenville case is not on all fours with the case at bar in that it does not appear that South Carolina had enacted the necessary legislation under Title 26, Sec. 1562, U. S. C., as had Michigan (Sec. 3746, Compiled Laws Michigan, 1929; Appendix, page 51). Therefore there was a valid lien in the Greenville case — none in the case at bar because of the Government's failure to comply with the Michigan statute.

These cases are the only adjudications that we have been able to find involving the question herein presented, are extremely well reasoned, and do, we believe, result in a sound and logical conclusion. We have been unable to find any adjudications to the contrary, except the *Greenville* decision supra, and the courts have consistently held the opposite to the decision of the District Court and Circuit Court of Appeals here.

In the case of *In re Howell and King Co.*, 16 Fed. Supp. 984, the District Court held that State, county and local taxes, which were made first liens by the State laws, were required to be paid first from funds of the bankrupt estate, but the tax due to the United States would not be paid as a lien claim where notice of the lien had not been filed. The Court in this case also followed the decision in the case of *Winston-Salem v. Powell Paving Company*, 7 Fed. Supp. 424, *supra*.

In the case of *City of Walla Walla v. State*, 85 Pac. (2) 676, 119 A. L. R. 1327, the Supreme Court of the State of Washington held that an inheritance tax lien was subordinate to general ad valorem tax liens upon real estate, the Court saying in its opinion, at page 678 of the Pac. Rep. in part as follows:

> "The general ad valorem tax upon real property lies at the foundation of the tax structure of the state, and its paramount lien is, in concept, well nigh tradition. Such tax is imposed directly upon property and exacted from all owners thereof. It is levied annually, at a regular time, and operates uniformly according to fixed general rules. In reliance upon the comparative certainty of its collection, public officials administer the affairs of state. That this tax be promptly and fully collected is of supreme and vital importance to the people of the commonwealth.

The inheritance tax, on the other hand, is not a property tax, but a special tax imposed upon the individual for the enjoyment of the privilege of receiving property on the death of the owner. It did not become a part of our tax system until 1901. Laws of 1901, chapter 55, page 67. Such tax does not operate uniformly, and the total annual revenue therefrom cannot be predicted with any degree of certainty. Although it is a valuable auxiliary to the general tax, there is no gauge by which its ultimate contribution can be measured. It is not a sure foundation upon which the inexorable and recurring demands of safe government and public need can rest.

There can be no doubt that the legislature has always, in enacting the various tax statutes, had these differences in mind. It must also have had in mind the difference between merely establishing a lien for a tax and fixing priority between various tax liens. To insure the collection of the inheritance tax, the legislature has provided that such tax 'shall be and remain a lien on such estate from the death of the decedent until paid.' Laws of 1901, Chapter 55, Section 1, page 67; Rem. Rev. Stat. Section 11201. But, on the subject of priority liens, it has said, since 1891, with reference to general taxes on real property, that the lien for such taxes 'shall have priority to and shall be fully paid and satisfied before any * * * deed, obligation or liability to or with which said real property may become charged or liable.' "

Congress Is Not Empowered to Enact Legislation That Would Make United States Tax Liens Superior to Specific and Complete Tax Liens of the States and Their Subdivisions.

Ad valorem taxation of real and personal property is the principal source of revenue for the support of state and local units of government. This source of revenue is the tax base, the very foundation of these many units of government. Does Congress possess the power to invade this source in enforcing the payment of its taxes by asserting a priority resulting in the destruction of the tax interest of the states and their political subdivisions? Since Justice Marshall's early declaration that "the power to tax is the power to destroy," this principle has been in force in this country. Have the people by the Constitution vested in Congress the power to destroy the states? To ask the question is to answer it. The seriousness of this problem becomes apparent when consideration is given to the ever increasing Federal taxes at the present time and the obviously necessary additional expansion of this field in the future to retire the rapidly increasing Federal debt.

The draftsmen of the Constitution created a federated republic composed originally of thirteen sovereign states. The states delegated to the national government certain powers, reserving all other powers to themselves or to the people. It was never intended to make the states completely subordinate to the United States. The states reserved to themselves all the attributes of sovereignty which they did not delegate to the Federal Government. On the contrary the United States was not intended to be subordinate to the States and from the time of the famous case of *McCulloch vs. Maryland*, 4 Wheat. 316, 4 L. Ed. 479, to the present time this system of dual sovereignty has been recognized by the courts.

The states have never been subject to the taxing jurisdiction of Congress. They are independent sovereignties. In the case of *Ohio Life Insurance and Trust Company v. DeBolt,* 16 How. 230, the Supreme Court of the United States said:

> "It will be admitted on all hands that with the exception of the power surrendered by the constitution of the United States, the people of the several states are absolutely and unconditionally sovereign within their respective territories."

Have the states surrendered to the Federal Government the power to deprive the states of the foundation of their source of revenue? We think not. The Supreme Court anticipated this problem when they were concerned with the priority accorded by Congress in Section 3466 of the Revised Statutes (Brief, p. 35).

In the cases of *Spokane County, et al. v. United States,* 279 U. S. 80, 73 L. Ed. 621; and *People of the State of New York v. Maclay,* 77 L. Ed. 754, 53 S Ct. 326, 288 U. S. 290, relied upon by respondent, the Supreme Court expressly reserved decision upon the question of priority of a United States tax claim over a specific and completed tax lien of a State or its political subdivisions. These cases will be discussed in detail subsequently in this brief.

In the case of *Lane County v. Oregon,* 74 U. S. 71, 19 L. Ed. 101, the Supreme Court in its opinion, at page 104 of the L. Ed. Rep., said:

> "The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each state compose a state, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without

the States in union there could be no such political body as the United States.

Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a National Government, acting, with ample power, directly upon the citizens, instead of the Confederate Government, which acted with powers, greatly restricted, only upon the States. But in many articles of the Constitution the necessary existence of the States and, within their proper spheres, the independent authority of the States, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the National Government are reserved. The general condition was well expressed by Mr. Madison in the Federalist, thus: 'The Federal and State Governments are, in fact, but different agents and trustees of the people, constituted with different powers and designated for different purposes.'

Now, to the existence of the States, themselves, necessary to the existence of the United States, the power of taxation is indispensable. It is an essential function of government." * * * *"In respect, however, to property, business and persons within their respective limits, their (the states) power of taxation remained and remains entire."* * *

IV.

Section 3466 of the Revised Statutes Does Not Apply.

This section of the *Revised Statutes*, being *U.S.C.A. Title* 31, *Section* 191, provides as follows:

> "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having a sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed (R. S. Section 3466)."

This section has been strictly construed and applies only in those specific cases of insolvency outlined in the statute. None of the conditions necessary to make this section applicable exist in this case.

We do not understand that the respondent contends that Section 3466 is effective here but because it has relied almost entirely upon cases based upon this statute, we feel that this discussion is necessary.

The history of this section of the statute and its application is discussed in detail in the case of *Price v. United States*, 269 U. S. 492, 70 L. Ed. 373. In the case of *United States v. Oklahoma*, 261 U. S. 253, 46 S. Ct. 295, 67 L. Ed. 638, the Court was concerned with an interpretation of Section 3466, saying in its opinion, at page 643, with reference to this section, as follows:

"It has been considered in a number of cases in this court. The claim of the United States to the asserted priority rests exclusively upon the statute. No lien is created by it. It does not overreach or supersede any bona fide transfer of property in the ordinary course of business. It establishes priority which is limited to the particular state of things specified. The meaning of the word 'insolvent,' used in the act, and of the insolvency therein referred to, is limited by the language to cases where 'a debtor not having sufficient property to pay all his debts shall make a voluntary assignment,' etc. Mere inability of the debtor to pay all his debts in ordinary course of business is not insolvency within the meaning of the act, but it must be manifested in one of the modes pointed out in the latter part of the statute, which defines or explains the meaning of insolvency referred to in the earlier part. *United States v. State Bank,* 6 Pet. 29, 35, 8 L. Ed. 308, 310; *United States v. Fisher,* 2 Cranch, 358, 390, 2 L. Ed. 304, 314; *United States v. Hooe,* 3 Cranch, 73, 90, 2 L. Ed. 370, 375; *Prince v. Bartlett,* 8 Cranch, 431, 433, 3 L. Ed. 614, 615; *Conrad v. Atlantic Ins. Co.,* 1 Pet. 386, 439, 7 L. Ed. 189, 212; *Brent v. Bank of Washington,* 10 Pet. 596, 611, 9 L. Ed. 547, 553; *Field v. United States,* 9 Pet. 182, 201, 9 L. Ed. 94, 101."

See: *Liberty Mutual Insurance Company v. Johnson Ship Yards,* 6 Fed. (2) 752.

Respondent's counsel have cited in support of its position in this case, the case of *Spokane County, et al, v. United* States, 279 U. S. 80, 73 L. Ed. 621. This case involved the order of distribution of the funds of an insolvent as between the claim for county taxes and taxes levied by the United States. The tax laws of the State of Washington apparently provided that the county taxes involved were taxes in personam, that the tax constituted an obligation of the person owning the property at the time of the assessment. It further appeared that in accordance with

the statutes of the state the lien was not complete as there was nothing in the record to show that distraint by the sheriff or any of the necessary procedure required had been followed. The Supreme Court said in its opinion, at page 625, as follows:

> "From the judgment of the majority of the Supreme Court of Washington in this case, we must infer that the lien of the two counties for the taxes levied before the receiver was appointed and not collected were not specific. This is really a state question. It is explained by the concurring opinion of Judge Parker, as follows:
>
> 'I concur in the result reached in the foregoing majority opinion solely upon the ground that this tax debt due to the United States, viewed apart from any supporting lien right, has priority over this tax debt due the State of Washington, viewed apart from any supporting lien right. It seems clear to me that each of these two tax debts primarily came into existence by the levy of a tax in personam, and not by the levy of a tax in rem. I think a critical reading of the revenue legislation of the respective sovereignties, the United States and the state, and the record in this case showing the manner of the levying of these respective taxes, will render this plain. The revenue legislation of each has prescribed procedure by which its personam tax debts may be made specific liens upon property of one personally owing such tax debt. This record, I think, warrants the conclusion that neither the United States, the state of Washington nor Spokane County for the State of Washington has ever, by the prescribed statutory procedure, perfected its inchoate tax lien right against any of the property of which the funds here in question are the proceeds. I therefore view these respective tax debts wholly apart from any supporting lien right. Thus, I think the question of which shall be 'first satisfied' out of these funds is determinable by the language of Sec. 466 . . . . quoted in the majority opinion, and hence must be determinable in favor of the United States.'

> "Whatever might have been *the effect of more completed procedure in the perfecting of the liens under the laws of the state, upon the priority of the United States herein, the attitude of the state court relieves us of consideration of it.*"

This case is authority for the following:

1st. That debts due to a state which are not founded upon a specific lien must be subordinated to debts due the United States.

2nd. The question of whether or not a tax lien of a state or one of its political subdivisions is perfected or specific is a state question.

3rd. The Supreme Court of the State of Washington has determined that the personal taxes involved were taxes in personam, not in rem, and that the lien for such taxes was not specific or complete until seizure.

4th. The question was expressly reserved as to whether or not a different conclusion would have been reached if the lien of the county had been specific and complete.

This case is obviously not in point for the reason that it involves a proceeding under *Section* 3466 *of the Revised Statutes,* but it is interesting to note that the Supreme Court has, under that statute, made debts due the United Sates "first" claims. The Court reserved decision on the question of priority between the tax claim of the United States and a specific and complete tax lien of a state. There can be no question but that the tax claims of the City of Detroit and the State and County involved in the case at bar are complete and specific and have, in addition, been expressly made first liens.

The other and more recent case cited in support of the position of the United States in this matter is the case of *People of the State of New York v. Maclay,* 77 L. Ed. 754, 53 S. C. 326, 288 U. S. 290. In this case the question involved was between the United States and the State of New York as to the priority of payment from the assets of an insolvent corporation. The claim of the State of New York was for franchise taxes for the years 1921 to 1925, but such taxes were not assessed or liquidated nor the amount determined until after the receivership. The Court, in its opinion, in discussing the nature of the lien, said, at page 756 of the L. Ed. Rep. the following:

> "Liens in a sense they unquestionably are, but, we think, not so perfected or specific as to change the rule of distribution. The receivers were appointed, as we have seen, in January, 1927; and the petitioner, if not preferred at the time of the appointment, did not win itself a preference by anything done thereafter. *United States v. Oklahoma,* 261 U. S. 253, 260, 67 L. Ed. 638, 644, 43 S. Ct. 295. By the statutes of New York, 'every such tax or fee (including the annual franchise tax to be paid by corporations) shall be a lien and binding upon the real and personal property of the corporation . . . liable to pay the same until the same is paid in full.' New York Tax Law, Consolidated Laws, Chapter 60, Section 197. The lien thus created is effective for any purpose though its amount is undetermined."
>
> * * *
>
> "The problem here is different. To hold that a lien has progressed to such a point as to be a warning to mortgagees and purchaser of a contingent liability, like a notice of lis pendens, is far from holdthat while the liability is unliquidated and unknown, the lien thus created is perfect and specific. By the terms of hypothesis it is nothing of the kind. If the state were to stand upon the warning and omit to ascertain the debt, it would never be able to sell any-

> thing for it would not know how much to sell. Against mortgagees and purchasers a lien perfected afterwards may take effect by relationship as of the date of the inchoate lien through which mortgagees and purchasers became chargeable with notice. The doctrine of relationship will not divest the United States of the preference that accrued when receivers were appointed."

The Court then proceeded to discuss the question of judgment, mortgage and other liens and concluded at page 757 of the L. Ed. Rep. as follows:

> * * * "*Into these refinements and their consequences, there is no need to enter now. Enough for the present purposes that the statutory preference must prevail against the lien of a tax not presently enforcible but serving merely as a caveat of a more perfect lien to come.*"

The same comment can be made concerning this decision. It involves *Section* 3466 *of the Revised Statutes* and expressly reserves decision on the question of priority where a specific state lien is involved.

Respondent has cited the case of *Stover v. Scotch Hills Coal Company,* 4 Fed. (2) 748. This case also involves *Section* 3466 *of the Revised Statutes,* and, is, therefore, not helpful. The case concerns the priority of a United States corporate tax and capital stock and workmen's compensation fund assessment of the State of Pennsylvania, in a brief and poorly considered opinion. The reported decision does not disclose the nature of the lien imposed by the State of Pennsylvania which is presumably not specific or complete or else some consideration would have been given to the question.

The case of *Blumberg v. Federal Steel Corporation,* 16 A.F.T.R. 994 cited in support of the claim of the United

States is a decision of the Circuit Court of Wayne County, Michigan, involving *Section* 3466 *of the Revised Statutes.*

Respondent's case of *North River Coal and Wharf Company v. McWilliams Bros.*, 59 Fed. (2) 979 is the C.C.A. decision in the case of *New York v. Maclay, supra,* previously discussed. The comment of the Court on the question of the nature of the New York lien is of interest here:

> "Since the decision in *Spokane County, Washington, v. United States,* there can be no doubt that the United States should be awarded priority here, unless the taxes due the State of New York can be regarded as supported by a sufficient lien to give them preference over claims of the United States in spite of Revised Statutes, Section 3466 (31 U.SC.A. Section 191)."

The Respondent has blithely hurdled the question of the nature of the tax lien of the State, county and municipality involved in the case at bar by omitting discussion. This procedure follows the well established practice of stressing the facts and law when both support your contention, and neither when you find yourself vulnerable in both directions. This failure to argue the question is not surprising when we find that all of the adjudications involving Section 3466, giving the United States a first claim, reserve decision on the question, and the only pertinent decisions concerning the general lien of the United States support the priority of the local tax and assessment liens. *Sections* 315 *(a) and* 3186, *supra,* as previously stated, give the United States nothing but a general lien without designation of priority, whereas the tax liens of the local units of government are unquestionably specific, complete and prior.

Respondent also has referred to the case of *Portneuf-Marsh Company v. Brown,* 274 U. S. 630. This case did

not involve the priority of a United States tax lien but involved priority under the state law of irrigation projects governed by an act of Congress. Furthermore, the Court did not decide that, in the absence of express statute, priority of liens should be determined entirely by priority in time. The Court held that the question of priority was to be decided not by priority of time merely, but by examination of the entire plan for establishing the irrigation system, in the light of applicable statutes.

On the same point, the Respondent has cited the case of *Sloat v. Finance Corporation*, 219 Mich. 577. The question involved in this case was whether a garage-keeper's lien was superior to the prior recorded chattel mortgage lien in the absence of express statute controlling. This case did not involve tax liens and is not helpful. The priority of state, county and municipal tax liens in Michigan is well established by the Constitution, statutes and Charter provisions as previously discussed in this brief.

(NOTE: The italicizing throughout this Brief is ours.)

CONCLUSION

The tax and assessment liens of the City of Detroit, County of Wayne and State of Michigan, are by Michigan law, complete, specific and superior to any other claim or encumbrance upon the property. The estate tax lien of the United States is a general lien which has not nor could it be accorded by Congress, a priority over specific tax liens of a state and its subdivisions. The rule as enunciated by the Supreme Court of the United States in 1828 in the case of *Conard v. Atlantic Insurance Company of New York*, 1 Pet. 386, 7 L. Ed. 189, is still the law:

> * * * "But it has never yet been decided by this court that the priority of the United States will divest a specific lien attached to a thing, whether it be accompanied by possession or not." * * *

It is therefore, respectfully submitted that the Court should enter a decree ordering and determining:

1. That the notice of the estate tax lien of the United States Government did not contain a description of the properties sought to be reached and, therefore, did not comply with the statutes of the State of Michigan thereby making invalid the alleged Federal tax lien as against the specific and complete tax and assessment liens of the City of Detroit, County of Wayne and State of Michigan.

2. That the tax and assessment liens of the City of Detroit, the County of Wayne and State of Michigan are first liens in the property.

3. That in the event that the real estate described in the bill of complaint is ordered sold, that the proceeds be first

applied to the satisfaction of such tax and assessment liens, including interest and penalty to date of payment.

Respectfully submitted,

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APPENDIX

STATUTES, ETC.

FEDERAL STATUTES

Sec. 315 (*a*) *U.S.C.A. Title* 26, *Sec.* 427:

(a) UPON GROSS ESTATE. Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed. (Feb. 26, 1926, c. 27, § 315 (a), 44 Stat. 80; May 29, 1928, c. 852, § 613 (b), 45 Stat. 876; June 6, 1932, c. 209, § 809, 47 Stat. 283.)

Sec. 3186 *R. S., U.S.C.A., Title* 26, *Sec.* 1560-1567:

Sec. 1560. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (R. S. § 3186; May 29, 1928, c. 852, § 613, 45 Stat. 875.)

Sec. 1561. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (R. S. § 3186, May 29, 1928, c. 852, § 613, 45 Stat. 875.)

Sec. 1562. Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(a) In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(b) In the office of the Clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(c) In the office of the Clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia. (R. S. § 3186; May 29, 1928, c. 852, § 613, 45 Stat. 875.)

Sec. 1563. Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

(b) There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations. (R. S. § 3186; May 29, 1928, c. 852 § 613, 45 Stat. 876.)

Sec. 1564. (a) Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of

such tax and the amount of all prior liens upon such property. (R. S. § 3186; May 29, 1928, c. 852, § 613, 45 Stat. 876.)

(b) Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States. (R.S. §3186; May 10, 1934, 11:40 a.m., c. 277, §509, 48 Stat. 757.)

Sec. 1565. A certificate of release or of partial discharge issued under this sub-chapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876.)

Sec. 1566. The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of sub-section (b) of section 1563. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876.)

Sec. 1567 Sections 1563, 1564 (a), 1565, and 1566 shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this subchapter. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876.)

Sec. 64a, U.S.C.A. Title 11 Sec. 104:

Sec. 104. DEBTS WHICH HAVE PRIORITY.

(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district or municipality, in the order

of priority as set forth in paragraph (b) hereof: Provided, That no order shall be made for the payment of a tax assessed against real estate of a bankrupt in e ess of the value of the interest of the bankrupt estate therein as determined by the court. Upon filing the receipts of the proper public officers for such payments the trustee shall be credited with the amounts thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

(b) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expense of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fees, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary and involuntary cases, as the court may allow; (4) where the confirmation of composition terms has been refused or set aside upon the objection and through the efforts and at the expense of one or more creditors, in the discretion of the court, the reasonable expenses of such creditors in opposing such composition; (5) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of the proceedings, not to exceed $600 to each claimant; (6) taxes payable under paragraph (a) hereof and (7) debts owing to any person who by the laws of the States or the United States is entitled to priority: Provided, That the term "person" as used in this section shall include corporations, the United States and the several States and Territories of the United States.

(c) In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication. (July 1, 1898, c. 541, sec. 64, 30 Stat. 563; Feb. 5, 1903, c. 487, §14, 32 Stat. 800; June 15, 1906, c. 3333, 34 Stat. 267; May 27, 1926, c. 406, § 15, 44 Stat. 666.

CONSTITUTION OF MICHIGAN

Sections 20 *and* 25 *of Article VIII:*

Sec. 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.

Sec. 25. No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any city or village acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village voting thereon at a regular or special municipal election; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote.

Section 2 of Article X:

Sec. 2. The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of state government, the interest on any state debt and such deficiency as may occur in the resources.

STATUTES OF MICHIGAN

Sections 2230, 3429, 3500 *and* 3746, *Compiled Laws*, 1929:

Section 2230. (Sec. 3). Each city charter shall provide:

* * * * *

(f) That the subjects of taxation for municipal purposes shall be the same as for state, county and school purposes under the general law;

* * * * *

(i) For the levy, collection and return of state, county and school taxes in conformity with the general laws of the state, except that the preparation of the assessment roll, the meeting of the board of review, and the confirmation of the assessment roll may be at such times as shall be provided in the city charter;"

* * * * *

Sec. 3429. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or

upon any other final process of a court attachment, replevin, judgment, or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided, any provisions in the charter of such cities to the contrary notwithstanding.

Section 3500. (Sec. 107). This act shall be applicable to all cities and villages where not inconsistent with their respective charters." * * *

* * * * *

Section 3746. (Sec. 1.) That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled "Record of United States Tax Liens," indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States.

CHARTER, CITY OF DETROIT

Sections 10 *and* 21, *Chapter IV, Title VI (Old Charter)*:

Sec. 10. On completion of the list contained in the sales books, the city treasurer shall cause a notice to be published in the official daily newspaper for the city, once a week for four successive weeks, and posted in three or more public places in each assessment district. Such notice shall require the owners or occupants of, or parties interested in such lands, tenements, hereditaments or premises, to pay such assessment or tax. Such notice shall state that if default be made in making such payment, such real estate will be sold at public auction, at a day and place to be specified in said notice, for the lowest term of years at which any person shall offer to take the same in consideration of advancing and paying such assessment or tax, with the additions provided in this chapter, and the cost and expenses of advertising.

Sec. 21. It shall be the duty of the controller to bid in for the city, for a term of ninety-nine years, at any sale of real estate for assessments or taxes, every lot of land or premises for which no person shall offer to bid. If any purchaser shall refuse or neglect to pay the sum or sums bid by him, within the time and under the regulations prescribed by the common council, such bids shall inure to the use and benefit of the city, if the council shall so determine. Upon all such bids certificates of sale may be executed by the controller to the city attested by the city clerk and acknowledged in the same manner as provided in other cases of sale for assessment or taxes. In all cases of sales for special assessments the property so bid in for the city may at the option of the council be held in trust for the person or contractor in whose behalf such assessment shall have been made, or his assignee, or upon payment to such person or contractor of the amount for which such property shall have been bid in, the city may, as in case of the general tax, become the owner of the tax title or lease thus obtained and may dispose of the same as if obtained under a like sale for any general tax.

Sections, 9, 10, 11, 18, 19 and 21, Chapter IV, Title VI, (new charter):

Sec. 9. As soon as necessary each year before the annual sale the city treasurer shall in the column provided in the tax rolls list the amount of the unpaid real estate taxes as augmented. The total of the augmented tax with interest as herein provided in section eight (8) shall thereafter be the amount required to be paid for the tax on any description before the sale, as herein provided. In the tax rolls there shall also be a column in which the Treasurer shall enter the name of the purchaser of any description when the same shall have been sold.

Sec. 10. On completion of the list contained in the tax rolls of the unpaid taxes as augmented the city treasurer shall cause one notice to be published in a daily newspaper of general circulation in the City of Detroit, and posted in three or more public places in each assessment district. Such notice shall be published at least thirty days prior to the date of the sale and the newspaper notice shall contain a description of the property upon which the unpaid tax or assessment constitutes a lien, but need not contain the name of the owner of such property, or person obligated to pay such tax or assessment, or the amount of such tax or assessment. Such notice shall state that if default be made in making such payments, the lien of the city and the liability for such tax or assessment will be sold to the city of Detroit or, if provided by resolution of the Common Council, at public auction to the highest bidder, but for not less than the amount of said tax or assessment, interest and penalty thereon, on the second Tuesday in June of that year at the office of the city treasurer and continuing daily thereafter until all descriptions are offered. Following the publication of such notice containing a description of the property upon which the unpaid tax or assessment constitutes a lien, a notice shall be published once a week for four successive weeks in a daily newspaper of general circulation in the city of Detroit stating the date of the sale of the tax or assessment lien and advising that a copy of the list of descriptions of property involved in the same may be obtained at the office of the city treasurer.

Sec. 11. If the owner or occupant of, or parties in interest in such real estate, do not pay such assessment or tax, with costs, additions and charges within the period herein prescribed, then the city treasurer shall without further notice cause the lien of the city and the liability for such tax or assessment to be sold to the city of Detroit by bid of the controller unless provided by resolution of the common council that the same shall be sold at auction to the highest bidder thereof, but in either case the sale shall be for not less than the amount of said tax, interest and penalties thereon. The purchaser shall be required to pay to the city treasurer the amount of all previous bids then held by the city together with such interest and penalty from the time of such previous sale as the council shall direct: Provided, that such interest shall not exceed the amount as provided in section eight hereof or as provided in section seventeen hereof if more than two years have elapsed from and after the date of such previous sale. Should any such tax lien be sold for an amount over and above the tax liability with all interest and penalty thereon such excess shall be returned to the owner of the property on which such tax or assessment liability constitutes a lien, or the person liable for the payment of such tax or assessment by the treasurer or in the event of a dispute concerning the person entitled thereto, the same shall be paid by the treasurer to the person or persons held by a court of competent jurisdiction to be entitled to such excess. (As amended October 8, 1935. In effect October 15, 1935.)

Sec. 18. Should such tax lien and liability be still unpaid two years succeeding the date of its sale, the holder thereof (including the City of Detroit acting by its controller), in addition to such other remedies as may exist or be given by law, shall have the right, then or at any time thereafter, to file in the circuit court of Wayne County a bill in chancery to foreclose same. The holder of several tax liens on the same or different parcels of real etsate may file a single bill in chancery to foreclose the liens on the parcel or several parcels of real estate subject thereto. Such bill and the procedure thereon shall conform to the law in respect to foreclosure in chancery of liens on real estate other

than mortgage or other liens having special statutory provisions applicable thereto. Costs, including attorney fees, against either party may be fixed in the bill in chancery to foreclose the liens on the several parcels of real estate subject thereto. Upon the filing of such bill the court shall issue summons or other process for appearance as in other chancery cases or in lieu thereof either or both may make and enter an order for appearance against all defendants or several orders for appearances against different groups of defendants arranged as may be convenient and such order or orders shall be published or served (if there shall be more than one order one or more may be served and one or more published), as provided by law in case of absent defendants and if published a copy thereof shall in addition be sent by registered mail with the postage thereon fully prepaid to the last known address of the person or persons appearing by the records in the office of the register of Deeds of the County of Wayne to be the latest grantee or grantees in the regular chain of title of such lands or of any interest therein at the date of the filing of such bill of complaint and to the person or persons, if any there be, in the actual open possession of such parcel of land at the date aforesaid, and to the holder of record of any tax lien for the latest year's taxes then appearing of record in the office of the city treasurer or latest deed conveying title derived from such tax lien appearing of record in the office of the register of deeds and to the mortgagee or mortgagees named in all undischarged recorded mortgages or to any assignee or assignees thereof of record at the date aforesaid and to the holder of record of all undischarged record liens. The decree in such suit, if in favor of the holder of the tax lien, shall provide that possession of the premises subject thereto shall forthwith be given to him, unless the amount of the decree and all costs be paid within sixty days from its date, and shall award to the plaintiff a writ of assistance and any other process requisite to obtain possession. The decree shall not be entered before the expiration of one hundred and twenty days from the filing of the bill. There shall be no redemption period under such decree beyond said sixty days. Appeal may be taken on such decree in the same manner as

an appeal is taken in other chancery cases, but an appeal as to the lien on any parcel or by any defendant shall not affect the proceedings on any other parcel or defendant as to which there has been no appeal. The decree, if in favor of the plaintiff and if it is not paid within said sixty days and if there is no appeal, shall be conclusive as to the title and right of possession of the plaintiff, and shall direct the controller to execute and deliver a deed in appropriate form to the plaintiff which shall vest in the plaintiff absolute title in fee as against all persons claiming estate or interest whether arising or existing prior to the time such tax first became a lien or subsequent thereto: Provided that any state or county taxes or assessments that have been bid to the state or remain unpaid in the office of the auditor-general or county treasurer whether the lien for such taxes or assessments became a lien prior to or subsequent to the tax lien under foreclosure, estates or interests arising from taxes or assessments becoming a lien subsequent to the lien under foreclosure on the property described in such deed, and any restrictions in respect of building or use in common with other property in the immediate neighborhood, shall not be affected by such sale foreclosure and deed.

If the court in such procedure to foreclose the tax or assessment lien shall find or if appeal is taken and it is determined that the sale of the same to the purchaser (other than the City of Detroit by bid of the controller), was void, the City of Detroit shall refund to the purchaser thereof the amount of his bid together with interest thereon at the rate of five per cent. per annum. (As amended Oct. 10, 1933. In effect Oct. 16, 1933).

Sec. 19. The real estate deeded to the city under a foreclosure of its tax lien may be used by the city for municipal purposes or may be leased, sold, conveyed, transferred or disposed of by the common council or the lease, sale, conveyance, transfer or disposal of such real estate may be authorized by the common council under such terms and conditions as they may prescribe. (As amended Oct. 10, 1933. In effect Oct. 16, 1933.)

Sec. 21. At every sale it shall be the duty of the city controller to bid in for the city, at the amount thereof, the tax lien on every parcel of land or premises sold, except those parcels offered for sale at public auction to the highest bidder as provided by resolution of the common council which parcels shall also be bid in by the controller, if no person shall make a bid for the same. Upon all such bids by the controller certificate of sale may be executed by the treasurer to the city and acknowledged in the same manner as provided herein in other cases of sale. The city shall have all the rights and remedies herein given to private purchasers of tax liens. In all cases of sales for special assessments the lien so bid in for the city may at the option of the council be held in trust for the person or contractor in whose behalf such assessment shall have been made, or by his assignee, or upon payment to such person or contractor of the amount for which such lien shall have been bid in, the city may, as in the case of the general tax, become the owner of the tax lien and may dispose of the same as if obtained under a like sale for any general tax. All tax liens, bid in by the city, shall be payable at any time before foreclosure thereof upon the payment of the amount of the tax with interest and penalties as provided in sections sixteen and seventeen hereof. (As amended October 8, 1935. In effect October 15, 1935.)

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No. 214

In the Supreme Court of the United States

OCTOBER TERM, 1942

STATE OF MICHIGAN, JOHN J. O'HARA, AUDITOR GENERAL FOR THE STATE OF MICHIGAN, COUNTY OF WAYNE, A CORPORATE BODY POLITIC, JACOB P. SUMERACKI, TREASURER FOR THE COUNTY OF WAYNE, CITY OF DETROIT, A MUNICIPAL CORPORATION, AND ALBERT E. COBO, TREASURER OF THE CITY OF DETROIT, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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STATE OF MICHIGAN, JOHN J. O'HARA, AUDITOR GENERAL FOR THE STATE OF MICHIGAN, COUNTY OF WAYNE, A CORPORATE BODY POLITIC, JACOB P. SUMERACKI, TREASURER FOR THE COUNTY OF WAYNE, CITY OF DETROIT, A MUNICIPAL CORPORATION, AND ALBERT E. COBO, TREASURER OF THE CITY OF DETROIT, PETITIONERS

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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OPINIONS BELOW

The district court delivered no opinion. Its findings of fact and conclusions of law (R. 229–243) are reported at 41 F. Supp. 41. The opinion of the circuit court of appeals (R. 292–296) is reported at 127 F. (2d) 64.

JURISDICTION

The judgment of the circuit court of appeals was entered on April 8, 1942 (R. 290). The petition for certiorari was filed on July 7, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the lien of the United States for federal estate taxes upon the real estate of the decedent, although unrecorded, is superior to liens for unpaid local real estate taxes which attached subsequent to the lien for the federal tax.

STATUTES INVOLVED

The statutes involved will be found in the Appendix, *infra*, pp. 9–11.

STATEMENT

The facts were stipulated (R. 100–130–f) and found by the district court as stipulated (R. 229–240). They may be summarized as follows:

John P. Paul, a resident of Detroit, Michigan, died intestate on May 5, 1926 (R. 229). On July 5, 1927, his widow, Lena Paul, filed a federal estate tax return for the estate of her husband and paid the tax reflected thereon (R. 229). Subsequently the Commissioner of Internal Revenue duly assessed a deficiency, together with interest, against the estate (R. 230). Though demands were made by the Collector, no part of the deficiency or interest has been paid (R. 230).

At the time of his death, John P. Paul and his wife, Lena Paul, owned as tenants by the entirety some fifty parcels of Detroit real estate (R. 230–231). Later some of the parcels were mortgaged to secure loans made by the Detroit Bank and others (R. 235–239). Upon most of the unmortgaged parcels, the local real estate taxes due to the State of Michigan, the County of Wayne and the City of Detroit were not paid for the years following 1929 or 1930 (R. 115–130). The estate of John P. Paul was not probated and there were no assets other than the real estate from which the federal estate tax could be collected (R. 239).

On May 4, 1936, the United States instituted an action to foreclose its lien upon the real estate for the unpaid federal taxes and interest (R. 1–47). The petitioners were joined as parties to the action (R. 2) and each of them filed an answer asserting that its lien for unpaid local real estate taxes was superior to the lien of the United States (R. 63–87, 88, 98–99). The mortgagees also claimed superiority for their liens (R. 49–62). The district court decided that since the lien of the United States for unpaid federal estate taxes was prior in time, it was superior in right to the liens for the unpaid real estate taxes, and to the liens of the subsequent mortgagees (R. 241). Upon appeal this decision was affirmed by the circuit court of appeals (R. 292–296).

The Detroit Bank has filed a petition for certiorari seeking review of the judgment of the circuit

court of appeals insofar as it relates to the relative priority between the mortgage liens and the federal estate tax lien. *The Detroit Bank* v. *United States*, No. 156, present Term.

ARGUMENT

Under Section 315 (a) of the Revenue Act of 1926 the estate tax became "a lien for ten years upon the gross estate of the decedent," including the real property held by him by the entirety. The lien attached on May 5, 1926, when the decedent died. *Rosenberg* v. *McLaughlin*, 66 F. (2d) 271 (C. C. A. 9th); *United States* v. *Ayer*, 12 F. (2d) 194 (C. C. A. 1st). The earliest of the liens for unpaid local real estate taxes did not attach before 1929. The district court and the circuit court of appeals, therefore, were correct in deciding that the federal estate tax lien, being prior in time, was superior in right to the lien of the petitioners. Cf. *Rankin* v. *Scott*, 12 Wheat. 177, 179.

1. In Part I of their supporting brief, petitioners urge that respondent's lien is void because notice of it was not filed in accordance with Section 3746 of the Compiled Laws of Michigan. This is the chief contention made by the Detroit Bank in its petition for a writ of certiorari to review the judgment below. In our brief in opposition to that petition (No. 156, present Term) we discussed the applicable statutes and pointed out that the lien did not require filing or recordation because it arose under Section 315 (a) of the Reve-

nue Act of 1926 and not under Section 3186 of the Revised Statutes.

There is a second answer to the contention as it is made by these petitioners. Section 3186 provides not that the failure to file notice of the lien in the proper office renders the lien invalid, but only that it "shall not be valid as against any *mortgagee, purchaser,* or *judgment creditor.*"[1] Since petitioners are none of these, the fact that the notice was not recorded is of no consequence here. Insofar as the Michigan statute (1 Compiled Laws of Michigan (1929) § 3746) purports to provide that the lien cannot be acquired unless notice is recorded, it exceeds the authority given by Congress and is, therefore, ineffectual as an unwarranted interference with the federal taxing power. *United States* v. *Snyder,* 149 U. S. 210.

2. Petitioners also contend (Br., Pts. II and III) that their liens are superior to the lien of the United States because they are made so by the laws of Michigan. The court below rejected this contention on the ground, *inter alia,* that state law did not give the real estate tax liens priority. Sound reason supports that conclusion. The state statute provides only that the taxes shall become a lien upon real estate at once when assessed and shall continue as such until payment (6 Michigan Stats. Ann., 1935, Sec. 7.81). No express provision makes the tax lien a first lien upon the property

[1] Italics added.

but the lien attaches to all the land and therefore to the interest of a mortgagee or other lienor. See *Harrington* v. *Hilliard,* 27 Mich. 271; *Horton* v. *Ingersoll and Saunders,* 13 Mich. 409; *Noeker* v. *Howry,* 119 Mich. 626. Doubtless this theory explains the phraseology of the next sentence in the statute, which provides—

> And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property * * *.

But the theory cannot apply when the United States is lienor because its property, i. e., its interest in the real estate, is not taxable by a state. And in the absence of an express provision it connot be inferred that the state intended to make its tax lien superior to federal charges earlier in point of time. Compare *Eagle Point Irr. District* v. *Cowden,* 137 Ore. 121; *Scandinavian American Bank* v. *King County,* 92 Wash. 650.

But even if the Michigan statute does attempt to make the lien for state real estate taxes superior to the federal lien which was prior in time, the statute would not be effective to displace the lien of the United States. When both the United States and a State declare their respective tax claims to be first charges, the federal lien is superior to any state lien, except possibly a prior specific, perfected lien.[2] *Spokane County* v. *United States,* 279 U. S.

[2] The question of priority between federal charges and a prior specific state lien has always been expressly reserved in the decisions of the Court.

80; *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Texas*, 314 U. S. 480. Cf. *United States* v. *Snyder, supra*; *Florida* v. *Mellon*, 273 U. S. 12.

There can be no doubt that the United States has provided that its lien shall be prior to a state lien subsequently attached. In the instant case the lien arose under Section 315 (a) of the Revenue Act of 1926 (see pp. 4–5, *supra*). It was not an inchoate right or floating charge requiring further steps to perfect it. It had, by the terms of that section, attached to the gross estate as the property giving rise to the tax, just as the state lien attached to the property against which the state tax was levied. Section 315 (a), therefore, must be interpreted in the light of the general rule that a lien prior in time is prior in right (*Rankin* v. *Scott, supra*), and it cannot be supposed to grant the states the right to interfere to collect state taxes assessed subsequent to perfection of the lien.

The result would be the same even if it were assumed that the lien were based upon Section 3186 of the Revised Statutes, as amended. That section specifically provides priority for certain liens subsequent in point of time, for example, for the lien of securities issued for a full consideration, but it does not authorize the states to impose prior charges hindering the collection of federal revenues. The mention of one exception is persuasive evidence that Congress intended the lien of the federal taxes to take precedence over liens subsequently accrued without other exceptions. The

Circuit Court of Appeals for the Fourth Circuit adopted this view in *United States* v. *City of Greenville,* 118 F. (2d) 963. The question has not arisen in other circuits.[3]

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

OSCAR COX,
Acting Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
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Special Assistants to the Attorney General.
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Attorney.

JULY 1942.

[3] *United States* v. *City of Greenville, supra,* reversed *United States v. Woodside,* 34 F. Supp. 281 (W. D. S. C.) and expressly overruled *City of Winston-Salem* v. *Powell Paving Co.,* 7 F. Supp. 424 (M. D. N. C.). Earlier the Supreme Court of West Virginia had followed the latter decision in *Berrymont Land Co.* v. *Davis Creek Land & Coal Co.,* 119 W. Va. 186, and held as a matter of the interpretation of Section 3186 that a state which foreclosed its tax lien and sold land for taxes gave a title good against a lien arising under Section 3186 prior to the state tax lien. Since the lien in this case arises under Section 315 (a), that decision does not conflict with the holding below. Moreover, it seems reasonable to believe that the Supreme Court of West Virginia, which sits in a state within the Fourth Circuit, would now follow *United States* v. *City of Greenville, supra.*

APPENDIX

Revised Statutes:

SEC. 3186 (as amended by Section 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791):

(a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice;

* * * * *

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the

deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (U. S. C., Title 31, Sec. 191.)

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: * * *

* * * * *

SEC. 315. (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. * * *

Michigan Statutes Annotated, 1935, Vol. 6:

SEC. 7.81. *Property taxes; lien after December 1; precedence of lien, exception, city personal property tax lien.* SEC. 40. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first [1st] day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first [1st] lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first [1st] day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, * * *.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 214

STATE OF MICHIGAN ET AL. AND THE CITY OF DETROIT ET AL., *Petitioners,*

vs.

THE UNITED STATES OF AMERICA, *Respondent.*

BRIEF OF AMICUS CURIAE FOR THE MEMBER CITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS

Filed by the Following Members of the Committee on Taxation and Revenues:

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 214

STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a corporate body politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a municipal corporation, and ALBERT E. COBO, Treasurer of the City of Detroit,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

BRIEF OF AMICUS CURIAE FOR THE MEMBER CITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS

STATEMENT

The National Institute of Municipal Law Officers is an organization of 334 municipalities (located in 45 States) acting through each member city's chief legal officer. The title of this office varies throughout the nation from Corporation Counsel to City Attorney, City Solicitor, Municipal Counsellor, Director of Law, etc. The purposes of the National Institute are to provide a municipally owned and operated clearing house for municipal legal information so as to make the experience of all member cities available to each individual member, and to provide a vehicle for joint action on legal matters affecting all municipalities.

This brief is submitted because the National Institute of Municipal Law Officers is apprehensive of the adverse effect upon city revenues of the decision in the Circuit Court

of Appeals in this case. The decision makes an inchoate lien for the Federal Estate Tax superior and paramount to the specific ad valorem tax liens of states and municipalities. The decision, in our opinion, brings to an end the supremacy of states and cities as taxing sovereignties in their own respective spheres. It nullifies in a large measure both the statutory and case law of several states and if sustained will be a damaging precedent to cities throughout the country.

Since the founding of this Nation, the State and municipal governments have relied almost exclusively upon the real estate tax to obtain necessary funds for their operation. In recent years, State governments have shifted to sales, income, use, and other taxes for a major part of state tax revenues, but city governments still depend almost entirely upon real estate taxes for the revenues to pay their necessary expenses, and the interest on their bonded indebtedness. Almost every bond issued by cities is a lien upon this real estate tax. In this situation, any action which imperils the real estate tax in turn imperils the fiscal integrity of cities.

In recent years real estate has lost its place as a lucrative source of tax revenues because of the decline in real estate values. With the coming of war and the inevitable shifting of population to war industry centers, the taxable wealth of the Nation has been all the more concentrated in wages and other intangibles, rather than real and personal property. Many cities face critical situations due to the taking over of large areas of land by the Federal government and resultant removal of these areas from the tax rolls. Wartime restrictions have lowered the value of business property so as to make necessary a general reassessment in the business districts of many cities. Federal wartime taxes are cutting deeper and deeper into the income of municipal taxpayers, thus making it harder and harder for these taxpayers to meet municipal tax payments. This court can, therefore, understand that if the Federal government can make taxes

it imposes a lien prior to the lien of basic municipal real estate taxes, municipal governments may be unable to function at all because with Federal taxes coming first there will be very little left for the cities. The decision of the Circuit Court of Appeals in this case therefore represents a direct attack upon the fiscal integrity of cities as it lets the Federal government get in ahead of cities, and in effect, destroys the value of the tax upon which municipal government must base its very existence. Such an attack would be disastrous to municipal bondholders as it would sweep away the very thing—the very safety—they thought they were getting, and the very safety which cities thought they were giving these bondholders. No one will purchase a municipal bond if the principle is established that the Federal government can step in and place Federal taxes ahead of city real estate tax liens as the collectability of city taxes would then depend upon the amount of Federal taxes levied, and with the amount of Federal taxes varying from year to year no certainty could surround municipal bonds. Aside from the bondholders, however, the decision strikes directly at cities in such a way as to make wartime operation of cities a real problem if it is sustained and cities are subjected to the fluctuating tax priority ideas of the Federal government. In these circumstances, the undersigned believe it their duty to urge upon this court the most careful consideration of the vital issue before it in this case—the matter is of vital concern to all members of the National Institute of Municipal Law Officers.

Our brief is confined to a summary of the principles which in our opinion the Lower Court has failed to weigh and apply.

SUMMARY OF ARGUMENT

Point I.

Since the amendment of Section 3186 of the Revised statutes, *United States* v. *Snyder,* 149 U. S. 210 and *United States* v. *City of Greenville,* 118 Fed. (2d) 963, no longer apply and the lower Court erred in following these cases.

Point II.

The decision of the Lower Court denies the principle of the traditional and reserved immunity of a sovereign state in the control of its own fiscal affairs.

ARGUMENT

Point I.

Since the amendment of Section 3186 of the Revised Statutes, United States v. Snyder, 149 U. S. 210 and United States v. City of Greenville, 118 Fed. (2d) 963, no longer apply and the Lower Court erred in following these cases.

Municipalities are the creatures and agencies of the State; state tax laws, both statutory and case, apply to the cities. The ad valorem tax is the life of the states and cities, and states are constitutionally supreme in that field. The people of the states have by statute made their ad valorem tax liens by express language prior, superior and paramount to all other liens, and the power to do so has not been surrendered to the Federal government. Ad valorem taxes are levied in proportion to specific state and city budgetary needs; special taxes, such as the estate tax, are levied at a rate free of any specific need and therefore represent a class of lien inferior to specific state liens. The state lien automatically by express language is made prior and paramount and usually valid until paid; on the other hand the estate tax lien is not expressly made a prior lien but requires a ministerial act of recording in accordance

with state recording laws and that being done, the lien is good for a limited period of years. We submit these two liens are not of the same dignity. But even if the estate tax lien, perfected to the ultimate, is of the same class as the specific ad valorem lien of the states, in which supposition the rule of priority in time would apply, yet in the instant case the Federal lien was not perfected for failure to comply with the provisions of Section 3186 R. S., 26 U. S. Code § 1562, the salient provision of which provides for the filing of a Federal lien in accordance with the state law in order to establish the validity of that lien.

We submit that the Lower Court did not give sufficient consideration to the case. It relied upon *United States* v. *Snyder*, 149 U. S. 210 and *United States* v. *City of Greenville*, 118 Fed. (2d) 963 (C. C. A. 4th). On the basis of these two citations, the Lower Court held that the provisions of the Michigan statute governing liens for property taxes were not applicable. In this the Court erred. The *Snyder* case is no longer the law since the amendatory enactments to Section 3186 of the Revised Statutes, and the Fourth Circuit Court in the *Greenville case* perpetuated the error by in turn relying upon the *Snyder* case. The Lower Court in the instant case relied upon both preceding cases and thus further perpetuated the error. The Federal government's case is predicated on this error. If it is still good law that a lien is what the statute makes it, we submit that the Federal government at least must bring itself within the terms of Section 3186 R. S. to give its lien validity; but that even if this had been done, there remains the important rule of statutory construction that the Federal law does not expressly make the estate lien superior, prior and paramount to a specific state ad valorem tax lien. The Federal statute is silent in this important respect. We submit the specific ad valorem tax lien of the state is superior to that of the Federal government and the Lower Court should so have found.

Point II.

The decision of the Lower Court denies the principle of the traditional and reserved constitutional immunity of a sovereign state in the control of its own fiscal affairs.

It appears to us that the decision of the Lower Court cuts more deeply than the technical reasons set forth in the preceding argument. The decision is a direct attack upon a principle fundamentally vital to state and city survival; it is a direct attack upon the sovereignty of the state. The state originally possessed and still possesses, the power to live by taxation. In *McCulloch* v. *State of Maryland,* 4 Wheat. (U. S.) 316 Mr. Justice Marshall said at page 436:

> "This opinion does not deprive the states of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank in common with the other real property within the state. * * * "

Without the doctrine of immunity the states cannot survive. The power was never relinquished and the principle of state immunity has been scrupulously upheld, protected and fostered by the decisions of this Honorable Court throughout the years. The states have traditionally and of necessity been first in satisfaction from their own ad valorem tax liens. The Federal government is required not to burden the state governments—that obligation is mutual.

In *Ashton* v. *Cameron County Water Improvement District No. 1,* 298 U. S. 513 this Court held (see p. 531) that the Congress may not "impair state powers—pass laws inconsistent with the idea of sovereignty" of the state. The *Ashton* case concerned a question of municipal bankruptcy under Chapter IX of the Bankruptcy Act (48 Stat. 798, 11 U. S. C. §§ 301-303). When the matter again came before this Honorable Court under Chapter X (50 Stat. 653, 11 U. S. C. §§ 401-404) the decision in *United States* v. *Bekins,* 304 U. S. 27 might well indicate a trend away from the principle of state immunity were it not for the fact that this Honorable Court was careful to say at page 51:

> "The statute is carefully drawn so as not to impinge upon the sovereignty of the State. The State retains control of its fiscal affairs."

We submit this fixed principle, solemnly adhered to since the decision in *McCulloch* v. *Maryland, supra,* is now directly attacked by the decision of the Lower Court. There was no deviation from this fixed line in *United States* v. *Bekins, supra,* in which a majority of this Honorable Court affirmed the constitutionality of the Municipal Bankruptcy Amendment.

The Congress observed the rule and did not attempt to make the estate tax lien here in question prior to the specific ad valorem lien of the States. It remained for the Circuit Court of Appeals in the instant case to differ with both bodies. The decision denies that states may of right work out their own salvation and is diametrically opposed, in our opinion, to the constitutional immunity of a state in its fiscal affairs, so strictly adhered to by both the Congress and this Honorable Court.

CONCLUSIONS

The Federal government has not perfected its inchoate lien. Even if the Federal government had done so as opposed to the state statute, which creates a specific lien first and prior over all other liens and encumbrances, the Federal statutes themselves are silent on the priority of the estate lien over any specific ad valorem state tax lien. Congress has carefully avoided the use of any language to make or attempt to create such priority and the Circuit Court of Appeals was in error in reading such priority into the Federal tax statute here considered.

The State is supreme in its own fiscal affairs and the decision of the Circuit Court of Appeals herein is a denial of that vital principle and should be reversed by this Honorable Court in order that the sovereignty of the states may not be infringed upon or denied.

Respectfully submitted on behalf of the member cities of the National Institute of Municipal Law Officers by the following members of the Committee on Taxation and Revenues:

FRANCIS P. BURNS,
City Attorney of New Orleans, Louisiana, Chairman.

JOHN J. GRIFFIN,
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City Attorney of Racine, Wisconsin.

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SUPREME COURT OF THE UNITED STATES.

No. 214.—October Term, 1942.

State of Michigan, John J. O'Hara, Auditor General for the State of Michigan, County of Wayne, a corporate body politic, Jacob P. Summeracki, Treasurer for the County of Wayne, City of Detroit, a municipal corporation, and Albert E. Cobo, Treasurer of the City of Detroit, Petitioners,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[January 4, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This is a companion case to No. 156, *The Detroit Bank* v. *United States*, decided this day. It involves the lien for estate taxes asserted by the Government and considered in our opinion in that case.

Petitioners, the City of Detroit, the County of Wayne, and the State of Michigan, assert liens for city, county and state taxes on the real estate in question, accruing subsequent to the federal estate tax lien. As defendants in the suit brought by the Government to foreclose the lien, they attack it on all the grounds considered and rejected in our opinion in the *Detroit Bank* case. They also contend that the state liens are given superiority over the federal lien by virtue of state statutes. Section 3429 of the Compiled Laws of Michigan, 1929, as amended by Act No. 38 of the Extra Session of 1934, declares that taxes "shall become a lien upon such real property" on specified dates following their assessment and, as construed by petitioners, states that they shall be a "first lien, prior, superior, and paramount". Section 3746 authorizes the filing of notice of liens as provided in R. S. § 3186, in the office of registers of deeds in the counties of Michigan. Petitioners contend that these and other statutory provisions as construed by Michigan courts give superiority to state tax liens

over other unrecorded liens, including the present estate tax lien of the federal Government.

We do not stop to inquire whether this construction of the state statutes is the correct one for we think the argument ignores the effect of a lien for federal taxes under the supremacy clause of the Constitution. The establishment of a tax lien by Congress is an exercise of its constitutional power "to lay and collect taxes". Article I, § 8 of the Constitution. *United States* v. *Snyder*, 149 U. S. 210. And laws of Congress enacted pursuant to the Constitution are by Article VI of the Constitution declared to be "the Supreme Law of the Land; and the Judges in every State shall be bound thereby any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

"It is of the very nature and essence of a lien, that no matter into whose hands the property goes, it passes *cum onere*." *Burton* v. *Smith*, 13 Pet. 464, 483; *Rankin* v. *Scott*, 12 Wheat. 177, 179; *Howard* v. *Railway Co.*, 101 U. S. 837, 845. Hence it is not debatable that a tax lien imposed by a law of Congress, as we have held the present lien is imposed, cannot, without the consent of Congress, be displaced by later liens imposed by authority of any state law or judicial decision. *United States* v. *Snyder, supra; United States* v. *City of Greenville*, 118 F. 2d 963. Similarly we held that the priority of payment commanded by R. S. § 3466 could not be set aside by state legislation. *United States* v. *Texas*, 314 U. S. 480, 486; *County of Spokane* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290; cf. *Missouri* v. *Ross*, 299 U. S. 72.

As the federal lien with which we are here concerned attached to private property prior to the acquisition of any interest in that property by the state, we need not consider the extent to which Congress may give, or intended by § 315(a) to give, priority to a federal lien over a previously perfected state lien. Compare *New York* v. *Maclay, supra*, 292; *County of Spokane* v. *United States, supra*, 95; *United States* v. *Texas, supra*, 484-6.

Affirmed.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

END